

# **Chapter 1**

## **Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012**

### **Conduct of the inquiry**

1.1 The Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 was introduced on 27 November 2012 by Senator Waters (Australian Greens) as a private Senator's bill.

1.2 On 28 November 2012 the Senate referred the bill for inquiry and report by 25 February 2013. On 25 February 2013, the reporting date was extended to 28 February 2013. On 28 February 2013, the report date was further extended to 12 March 2013.

1.3 The Senate Selection of Bills Committee noted in its report of 29 November 2012:

Referral of this Bill will provide an important opportunity for the Australian community and relevant experts and industry representatives to input on the Bill's provisions.<sup>1</sup>

1.4 The committee advertised the inquiry on its website and *The Australian* newspaper and wrote to organisations and individuals to invite submissions. The committee received 175 submissions and a number of form letters (listed at Appendix 1). The committee held two public hearings, both in Canberra, on 8 and 15 February 2013.

### **Summary of the bill**

1.5 The purpose of the bill is to prevent the Commonwealth from delegating its current powers under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for approving proposed actions that significantly impact on matters of national environmental significance to the states and territories.

1.6 Matters of national significance protected under the EPBC Act are those that would affect:

- world heritage properties
- national heritage places
- wetlands of international importance
- threatened species and ecological communities
- migratory species
- Commonwealth marine areas

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1 Senate Selection of Bills Committee, Report No. 16, 29 November 2012, Appendix 8.

- the Great Barrier Reef Marine Park
- nuclear actions (including uranium mines).<sup>2</sup>

### ***Environment Protection and Biodiversity Conservation Act 1999***

1.7 The EPBC Act is the Commonwealth's primary piece of environment legislation and was designed to address perceived problems with Australia's approach to environment protection. The Act replaced the *Environment Protection (Impact of Proposals) Act 1974*, the *Endangered Species Protection Act 1992* and a number of other environment related Acts.<sup>3</sup>

1.8 The objects of the Act include:

- to provide for the protection of the environment, especially those aspects which are a matter of national environmental significance;
- to promote the conservation of biodiversity;
- to provide for the protection and conservation of heritage;
- to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
- to assist in the co-operative implementation of Australia's international environmental responsibilities.<sup>4</sup>

### ***Current system of bilateral assessment and approvals processes***

1.9 At present, a proposed action that would affect matters of national environmental significance requires referral to the Commonwealth Minister for the Environment. If the minister decides that a proposed action will, or is likely to, have a significant impact on one or more matters protected by the EPBC Act, the action will need to be assessed and approved under the EPBC Act before it can proceed. This is called a controlled action.<sup>5</sup>

1.10 Proposed actions can be assessed using different methods, including accredited assessment based on information provided by the applicant, assessment on preliminary information, assessment by environmental impact statement or public

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2 EPBC Act, Part 3.

3 Acts consolidated in the EPBC Act include: the *National Parks and Wildlife Conservation Act 1975*; *Whale Protection Act 1980* and the *World Heritage (Properties Conservation) Act 1983*.

4 EPBC Act, subsection 3(1).

5 Department of Sustainability, Environment, Water, Population and Communities, *EPBC Act—Environment assessment process*, <http://www.environment.gov.au/epbc/publications/pubs/assessment-process.pdf> (accessed 14 January 2013).

environment report, and assessment by public inquiry.<sup>6</sup> The EPBC Act sets out statutory timeframes for approval decisions for all environmental assessment processes.<sup>7</sup>

1.11 Part 5 of Chapter 3 of the EPBC Act deals with bilateral agreements and makes provision for the Commonwealth Minister for the Environment to enter into bilateral agreements subject to conditions set out in the Act.

1.12 There are two types of bilateral agreement:

- an assessment agreement – where state or territory processes are used to assess the environmental impacts of a proposed action but the approval decision is made by the Commonwealth minister under the EPBC Act;<sup>8</sup> and
- an approval agreement – where actions that are subject to a bilaterally accredited management arrangement or authorisation process in place under state or territory law do not require further assessment or approval under the Act.<sup>9</sup>

1.13 The Commonwealth government has had bilateral agreements with all state and territory governments to accredit environment *assessment* processes that meet set standards. The Department of Sustainability, Environment, Water, Population and Communities (the department) has advised the committee that the agreement with New South Wales (NSW) has expired but is expected to be renegotiated in 2013.<sup>10</sup> Assessment agreements are in place with all other states and territories.<sup>11</sup>

1.14 An approval bilateral agreement was in place with the NSW government to protect the National Heritage and World Heritage values of the Sydney Opera House, however this expired in 2010.<sup>12</sup> The department advised the committee that this

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6 Department of Sustainability, Environment, Water, Population and Communities, *EPBC Act—Environment assessment process*, <http://www.environment.gov.au/epbc/publications/pubs/assessment-process.pdf> (accessed 14 January 2013).

7 See EPBC Act, s. 130; and Department of Sustainability, Environment, Water, Population and Communities, Answers to Questions on Notice, received 8 March 2013, pp 5–6.

8 EPBC Act, s. 47.

9 EPBC Act, ss. 29 and 46. See also Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 83, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 14 December 2013).

10 Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 3; see also Department of Sustainability, Environment, Water, Population and Communities, Answers to Questions on Notice, received 8 March 2013, p. 2.

11 See further Department of Sustainability, Environment, Water, Population and Communities, *Bilateral Agreements*, <http://www.environment.gov.au/epbc/assessments/bilateral/index.html> (accessed 24 January 2013).

12 Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 3.

agreement was replaced by a conservation agreement for the Opera House as a world heritage site because that was less administratively burdensome and achieved the same outcome.<sup>13</sup>

1.15 The department advised the committee that if a proposed action is covered by an assessment bilateral, then that action is assessed under the accredited state or territory process. After assessment, the proposed action still requires approval from the minister under the EPBC Act. This arrangement allows a proponent to produce a single set of environmental assessment documentation and to undertake a single public consultation process, thereby reducing duplication of state and Commonwealth requirements.<sup>14</sup> Under the EPBC Act the minister is required to provide a decision on a matter referred for approval within 30 days.<sup>15</sup>

1.16 The department states that assessments for 17 projects were completed under bilateral agreements in 2011-12 and a further 91 projects were under assessment using a bilateral agreement as of 30 June 2012. According to the department, the assessment bilateral approach accounted for 23% of projects approved in 2011-12.<sup>16</sup>

1.17 If the Commonwealth were to enter into approval bilateral agreements with the states or territories, this would allow projects with significant impacts on matters of national environmental significance to be both *assessed and approved* by state or territory authorities. The Commonwealth government would then have an oversight role.<sup>17</sup> At its public hearing in Canberra on 15 February 2013, the department outlined steps that the Commonwealth has to take should it enter into an approval bilateral agreement:

There are also a number of statutory steps required under the EPBC Act before the Commonwealth can enter into an approval bilateral agreement. Those safeguards include a statutory requirement that the draft approval bilateral agreements be made publicly available for comment for a minimum of 28 days under section 49A and, additionally, that the accreditation of the authorisation process is subject to disallowance within a period of 15 sitting days under section 46.<sup>18</sup>

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13 Department of Sustainability, Environment, Water, Population and Communities, *Proof Committee Hansard*, 15 February 2013, p. 55.

14 Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 3.

15 Department of Sustainability, Environment, Water, Population and Communities, *Proof Committee Hansard*, 15 February 2013, p. 51.

16 Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 3.

17 Professor Lee Godden, *Proof Committee Hansard*, 8 February 2013, p. 8.

18 Department of Sustainability, Environment, Water, Population and Communities, *Proof Committee Hansard*, 15 February 2013, p. 50.

### *The Hawke Review*

1.18 On 31 October 2008, the then Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP commissioned an independent review of the EPBC Act which was headed by Dr Allan Hawke (the Hawke review).

1.19 The review was undertaken in accordance with section 522A of the EPBC Act which stipulates that an independent review of the operation of the Act and the extent to which the objects of the Act have been achieved must be undertaken within 10 years of the Act's commencement.

1.20 The final report of the Hawke review was published in October 2009. *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (Hawke report) made 71 recommendations over a wide range of areas, all aimed at improving the operation the EPBC Act.<sup>19</sup>

1.21 The Hawke report discussed a number of issues relating to the relationship between the states and territories and the Commonwealth and their respective roles in assessment and approval processes.

1.22 Relevantly, recommendation four of the Hawke report states:

The Review recommends that the Commonwealth work with the States and Territories as appropriate to improve the efficiency of the Environmental Impact Assessment (EIA) regime under the Act, including through:

- (1) greater use of strategic assessments;
- (2) accreditation of State and Territory processes where they meet appropriate standards;
- (3) accreditation of environmental management systems for Commonwealth agencies where the systems meet appropriate standards;
- (4) publication of criteria for systems and processes that would be appropriate for accreditation;
- (5) creation of a Commonwealth monitoring, performance audit and oversight power to ensure that any process accredited achieves the outcomes it claimed to accomplish;
- (6) streamlining and simplification of assessment methods, including combining assessment by preliminary documentation and assessment on referral information and removal of assessment by Public Environment Report;
- (7) establishing joint State or Territory and Commonwealth assessment panels;

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19 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 27 November 2012).

- (8) use of joint assessment panels or public inquiry for projects where the proponent is either the State or Territory or Australian Government; and
- (9) greater use of public inquiries and joint assessment panels for major projects.<sup>20</sup>

1.23 The Commonwealth government agreed to this recommendation.<sup>21</sup> In its response to the Hawke report, the Commonwealth noted that the EPBC Act already provides for accreditation of state and territory assessment and approvals processes. The Commonwealth government's response stated:

The government is committed to enhancing the scope and use of these mechanisms to reduce duplication of systems and provide more certainty for business without reducing protection for matters of national environmental significance.<sup>22</sup>

1.24 Recommendation six of the Hawke report deals with an expanded role for strategic assessments and bioregional plans so that they are used more often; and a strengthened process for creating these plans. The recommendation also calls for changes to allow the Commonwealth to unilaterally develop regional plans, specify mandatory required information for strategic assessments; create a 'call in' power for plans, policies and programs likely to have a significant impact on matters that fall within the definition of national environmental significance, and for creation of a broad performance audit power to assess the performance of accredited systems.<sup>23</sup> The government accepted the substance of this recommendation, but not all elements of it.<sup>24</sup>

1.25 The Hawke report also recommended the appointment of a National Environment Commissioner and the creation of an independent National Environment

20 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 28, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 14 December 2013).

21 Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 10.

22 Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 11.

23 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 29, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 14 December 2013).

24 Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, pp 15–20.

Commission.<sup>25</sup> The Hawke report noted that the EPBC Act has no provision for an expert body to provide routine expert advice on actions referred under the Act,<sup>26</sup> and recommended that the National Environment Commissioner be responsible for the provision of advice to the minister for the purposes of making decisions about the environmental impact assessment and approval process under the Act.<sup>27</sup>

1.26 The report recommended that the primary objective of the National Environment Commissioner should be to promote the adoption of environmentally sustainable practices by providing independent scrutiny, reporting and advice. The Commissioner would also be responsible for:

- providing independent expert advice to the minister for the purposes of evidence based decision-making for environmental impact assessment and approvals processes under the Act;
- monitoring, audit, compliance and enforcement activities under the Act;
- undertaking and reporting on performance audits, for example, to assess the level of compliance with the Act by a particular industry sector or region;
- preparing other reports and providing other advice to the minister when requested – this could include advice about policies and programs; and
- responsibility for managing the provision of environmental data and information and reporting on that information.<sup>28</sup>

1.27 The government did not support this recommendation.<sup>29</sup>

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25 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 336, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 4 March 2013).

26 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 235, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 4 March 2013).

27 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 330, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 4 March 2013).

28 Department of the Environment, Heritage and the Arts, *The Australian Environment Act: Report of the Independent review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009 (Hawke report), p. 333, available at: <http://www.environment.gov.au/epbc/review/publications/final-report.html> (accessed 4 March 2013).

29 Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 114.



### ***Australian government response to the Hawke review***

1.28 On 24 August 2011, the Minister for Sustainability, Environment, Water, Population and Communities, the Hon. Tony Burke MP announced 'the first major overhaul' of the EPBC Act as part of the government's response to the Hawke report. He stated that the reforms would include:

A more proactive approach to protecting Australia's environment through more strategic assessments and regional environmental plans.

A more streamlined assessment process to cut red tape for business and improve timeframes for decision making, including an option for decisions on proposals within 35 business days, if all required information is provided.

New national standards for accrediting environmental impact assessments and approvals to better align Commonwealth and state systems.<sup>30</sup>

1.29 At the time of writing, legislation to amend the EPBC Act to implement these reforms had not yet been introduced, however the committee noted that the government is committed to introducing changes to the EPBC Act in 2013 as part of delivering its response to the Hawke report.<sup>31</sup>

### **COAG reform agenda**

1.30 Since 1997, under the former Howard government's *Heads of agreement on Commonwealth and State roles and responsibilities for the Environment*, the Council of Australian Governments (COAG) has agreed to the delineation of areas of environmental responsibility between the Commonwealth and the states and territories, with the focus of the Commonwealth on matters of national environmental significance and relevant international treaty obligations.<sup>32</sup>

1.31 In April 2012 COAG announced that it would reform the administration of national environment regulation in order to 'reduce duplication and double-handling while maintaining high environmental standards.'<sup>33</sup> To do this, COAG agreed to prioritise the development of approval bilateral agreements under the EPBC Act.

1.32 The agreement by COAG to streamline environmental assessments and approvals confirmed a proposal by the Business Council of Australia (BCA) published in a discussion paper for the COAG Business Advisory Forum and publicly released on 10 April 2012.

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30 <http://www.environment.gov.au/minister/burke/2011/mr20110824.html> (accessed 21 November 2012).

31 COAG Communique, 7 December 2012, p. 4, <http://www.coag.gov.au/node/475> (accessed 4 March 2013).

32 <http://www.environment.gov.au/epbc/publications/coag-agreement/index.html> (accessed 24 January 2013).

33 Department of Sustainability, Environment, Water, Population and Communities, <http://www.environment.gov.au/epbc/publications/accreditation-standards-framework.html> (accessed 11 December 2012).



1.33 The proposal recommended that all jurisdictions work together to ensure environmental impact assessments for all eligible projects are assessed using bilateral agreements under the EPBC Act.<sup>34</sup> It also recommended that the Commonwealth commit to a six month timeframe to accredit state environmental approvals to remove the Commonwealth's powers so that state approvals would count for Commonwealth approvals.<sup>35</sup>

1.34 The Commonwealth government had previously signalled its intention to make amendments to the assessments and approvals processes as part of its response to the Hawke report.<sup>36</sup>

1.35 Support for increased use of accredited assessments and approvals processes by the states and territories was endorsed by the inaugural Business Advisory Forum to COAG which was convened and chaired by the Prime Minister and attended by state and territory premiers and chief ministers, and business leaders. The communique from this forum announced:

From discussions today, our ambitions are clear: streamlined environmental regulation that delivers strong environmental outcomes and better conditions for business. In delivering these ambitions, the Commonwealth will maintain its capacity for a final approvals responsibility for World Heritage and high risk projects, with a framework to assess risk to be agreed between the Commonwealth and States, including on a bilateral basis.<sup>37</sup>

1.36 At its 13 April 2012 meeting, COAG also announced its agreement to:

- fast track the development of bilateral arrangements for accreditation of state and territory assessment and approval processes, with the frameworks to be agreed by December 2012 and agreements finalised by March 2013;
- develop environmental risk and outcomes based standards with states and territories by December 2012; and

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34 Business Council of Australia, *Discussion Paper for the COAG Business Advisory Forum*, 10 April 2012, p. 5.

35 Business Council of Australia, *Discussion Paper for the COAG Business Advisory Forum*, 10 April 2012, p. 5.

36 Australian Government, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 11.

37 Prime Minister of Australia, The Hon Julia Gillard MP, *Press Release*, Council of Australian Governments Business Advisory Forum Communiqué, 12 April 2012, <http://www.pm.gov.au/press-office/council-australian-governments-business-advisory-forum-communiqu%C3%A9> (accessed 23 January 2013).

- examine and facilitate removal of unnecessary duplication and reduce business costs for significant projects.<sup>38</sup>

### ***Framework of Standards for Accreditation***

1.37 Following the COAG meeting of April 2012, in July 2012 the Commonwealth government released to the states a *Statement of Environmental Assurance Outcomes* and *Framework of Standards for Accreditation*. These documents were made public in November 2012.

1.38 The *Statement of Environmental and Assurance Outcomes* lists outcomes for 'improving productivity, environmental outcomes as reflected in the EPBC Act, and associated outcomes for approval and assessment systems and assurance'.<sup>39</sup> This document expresses COAG's desire for the development of bilateral agreements which improve productivity outcomes and meet Australia's obligations under the EPBC Act.

1.39 The *Framework of Standards for Accreditation* sets out:

- standards for accreditation which reflect the specific accreditation requirements of the EPBC Act;
- requirements of Commonwealth law and policy that are essential for the Commonwealth to be satisfied that relevant environment standards will be maintained; and
- Commonwealth considerations to provide additional guidance to jurisdictions on areas that the Commonwealth will take into account when determining whether the standards have been met.<sup>40</sup>

### ***Places You Love Campaign***

1.40 Following COAG's announcement that the Commonwealth would consider amendments to the EPBC Act to allow it to enter into agreements with the states and territories to carry out approvals, an alliance of environment protection organisations started the 'Places You Love' campaign. This campaign called upon the Commonwealth to reject the COAG proposal to provide the states and territories with

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38 Department of Sustainability, Environment, Water, Population and Communities, *Draft Statement of Environmental and Assurance Outcomes*, p. 1  
<http://www.environment.gov.au/epbc/publications/pubs/environmental-assurance-outcomes.pdf>  
 (accessed 11 December 2012).

39 Department of Sustainability, Environment, Water, Population and Communities, *Draft Statement of Environmental and Assurance Outcomes*, p. 1  
<http://www.environment.gov.au/epbc/publications/pubs/environmental-assurance-outcomes.pdf>  
 (accessed 11 December 2012).

40 Department of Sustainability, Environment, Water, Population and Communities,  
<http://www.environment.gov.au/epbc/publications/accreditation-standards-framework.html>  
 (accessed 5 February 2013).

approval powers currently held by the Commonwealth Minister for the Environment.<sup>41</sup>

### ***COAG's meeting of 7 December 2012***

1.41 At its meeting of 7 December 2012 COAG considered issues related to reform of environmental regulation. The communique from this meeting stated that:

...the Commonwealth will introduce legislative reforms to progress its response to the Hawke review of the Environment Protection and Biodiversity Conservation Act 1999 to further streamline and strengthen environmental regulation.<sup>42</sup>

1.42 The communique advises that COAG is committed to streamlining environmental regulation to deliver 'strong environmental outcomes and better conditions for business'.<sup>43</sup> COAG also agreed that all jurisdictions will:

...direct their regulatory and referral agencies to eliminate duplication and to avoid sequential assessments and delayed approval processes and also to utilise common information requirements for both assessments and approvals.<sup>44</sup>

1.43 While it was anticipated that COAG may have announced its intention to give the states and territories increased powers for approvals, this did not occur.<sup>45</sup> In its submission to the inquiry the department advised that:

...significant challenges emerged in developing approval bilateral agreements that provide consistency and certainty for business, and assurance to the community that high standards will be met and maintained.

Consequently, approval bilateral agreements are not being progressed until these challenges can be met by states and territories.<sup>46</sup>

### **Overview of the provisions of the bill**

1.44 The purpose of the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 is to prevent the Commonwealth from delegating its current powers for approving proposed actions

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41 Places You Love, <http://placesyoulove.org/take-action/> (accessed 23 January 2013).

42 COAG Communique, 7 December 2012, p. 4, <http://www.coag.gov.au/node/475> (accessed 10 December 2012).

43 COAG Communique, 7 December 2012, p. 4, <http://www.coag.gov.au/node/475> (accessed 10 December 2012).

44 COAG Communique, 7 December 2012, p. 4, <http://www.coag.gov.au/node/475> (accessed 10 December 2012); See also: Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 5.

45 Reported by various media outlets, see for example: Babs McHugh, 'Industry says backflip on environmental approvals may be just a bump in the road', ABC Rural News, <http://www.abc.net.au/rural/news/content/201212/s3649908.htm> (accessed 5 February 2013).

46 Department of Sustainability, Environment, Water, Population and Communities, *Submission 114*, p. 5.

that significantly impact matters of national environmental significance to the states and territories.<sup>47</sup>

1.45 The proposed bill would also prevent the Commonwealth from referring its powers for regulating nuclear activities to state and territory governments.<sup>48</sup>

1.46 Proposed item 2 of the bill removes bilateral agreements from the list of cases set out in Part 4 where approvals under the EPBC act are not required.

1.47 Proposed item 4 of the bill amends the definition of bilateral agreements so that bilateral agreements under the EPBC Act would include environmental assessment processes, not environmental approvals.<sup>49</sup>

1.48 Proposed item 5 of the bill removes section 46 of the EPBC Act, and would have the effect of removing the ability for a bilateral agreement to declare actions that do not require approval under the Part 9 of the EPBC Act.<sup>50</sup>

1.49 Proposed items 6–36 of the bill are consequential amendments to prevent bilateral agreements from declaring that certain actions do not require approval under Part 9 of the EPBC Act.<sup>51</sup>

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47 Under section 29 of the EPBC Act, in circumstances where an action that would ordinarily require approval is taken in a state or territory, and the action is covered by a bilateral agreement, and there is a bilaterally accredited authorisation process or management arrangement in place, then the action is declared by agreement not to need approval.

48 Proposed item 23.

49 Explanatory Memorandum, p. 2.

50 Part 9 of the EPBC Act deals with approval of action.

51 Explanatory Memorandum, p. 2.