

**Parliament of the Commonwealth of Australia**

# **Response to Recommendations**

**Report of the Senate Environment,  
Communications, Information  
Technology and the Arts Reference  
Committee on**

**Commonwealth Environment Powers**

**May 1999**

*Senate Committee Report on Commonwealth Environment Powers  
Response to Recommendations*

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respect to ecologically sustainable development and impact on the environment. A State of the Environment report is required to be prepared every 5 years. The matters of national environmental significance are to be reviewed every 5 years, and the operation of the Act must be subjected to an independent review within 10 years of its commencement.

In addition, the EPBC Act is, through the bilateral agreements mechanism, promote the adoption of 'national standards'.

### **Recommendation 3**

**The Commonwealth should exercise a leadership role in the protection and improvement of the Australian environment. This role should be supported by the unsparing use of all Constitutional power available to the Commonwealth to act in the field of the environment.**

### **Recommendation 30**

**The Government should propose an amendment to section 51 of the Constitution to provide an express head of Commonwealth Parliamentary power to legislate with respect to the environment if and when a republican system of government is introduced by referendum and subsequent Constitutional Convention is convened.**

The Government has exercised a leadership role in the protection and improvement of the Australian environment through the implementation of a wide range of policies and programs. In terms of the legislative framework the EPBC Act provides for Commonwealth leadership on the environment, while also recognising and respecting the responsibility of the States and Territories for delivering on-ground natural resource management. The EPBC Act draws, as appropriate, on the Commonwealth's existing Constitutional powers in relation to external affairs, corporations, territories and trade and commerce to ensure protection for the environment. The Government believes these powers provide a sound basis for the EPBC Act and that amendments to the Constitution are not required.

### **Recommendation 4**

**The use of the concept of "national environmental significance" should be abandoned as a means of delineating the appropriate role of the Commonwealth in the regulation of environmental matters.**

### **Recommendation 21**

**The Commonwealth should be responsible for environmental impact assessment process whenever it is involved in making a decision about an activity or matter (its own or that of a third party) that may have a significant effect on the environment.**

Not accepted.

The Government has reviewed and fundamentally reformed Australian environment legislation with Commonwealth interests focused on the matters of national

environmental significance. The concept is articulated in the COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment which has been signed by all Governments. Under the EPBC Act, Commonwealth involvement in the environmental assessment and approval process is triggered by projects or activities which are likely to have a significant impact on matters of national environmental significance. The States and Territories are responsible for assessing impacts on other aspects of the environment.

The Government notes that adoption of recommendations 4 and 21 would result in some projects or actions that affect a matter of national environmental significance not being assessed by the Commonwealth.

#### **Recommendation 5**

**The Commonwealth must fully and effectively exercise its powers in negotiating, implementing and enforcing its international environmental obligations. National obligations require national administration.**

Accepted in part.

The implementation of commitments made under international environment agreements often requires a cooperative approach involving all relevant jurisdictions. The EPBC Act provides a legislative basis for implementing Australia's commitments under a number of these agreements while recognising the role of the States and Territories.

#### **Recommendation 6**

**The Government should conduct an inquiry into the possible use of its obligations under the Convention of Biological Diversity to establish a comprehensive framework for environmental legislation in Australia.**

Not necessary.

The EPBC Act ensures that the Commonwealth plays a leadership role to fulfil relevant treaty obligations including those of the Convention on Biological Diversity. The EPBC Act strengthens Australia's capacity to conserve its biodiversity through a substantially improved and integrated framework. In addition to the environment protection measures related to threatened and migratory species, Ramsar wetlands, World Heritage properties, and the Commonwealth marine area, the EPBC Act provides for world's best practice management of Commonwealth reserves and other protected areas. The EPBC Act also enables the identification and monitoring of biodiversity, the making of bioregional plans, and the protection of critical habitat, cetaceans and other marine species.

#### **Recommendation 7**

**The Commonwealth should acknowledge that it has ultimate responsibility for the safekeeping of World Heritage areas. The Commonwealth should exercise primary legal control over the protection, preservation and management of these areas.**

**Recommendation 8**

**The Commonwealth should strengthen its statutory framework for the identification and protection of World Heritage. The legislation should provide a comprehensive national regime.**

**Recommendation 9**

**The Commonwealth should continue to consult with States in order to obtain their agreement on nominations to the World Heritage List. In the event of disagreement, the Commonwealth should retain its power to make unilateral nominations. The Commonwealth should provide the ability for interested members of the public to nominate a property for listing to be considered by Commonwealth and relevant State Governments.**

The Commonwealth, as a State Party to the World Heritage Convention, recognises its duty of identifying, protecting, conserving, preserving and transmitting to future generations Australia's World Heritage properties. The EPBC Act provides up-front protection for World Heritage properties, a stronger and more efficient assessment and approvals process, and improved management for all World Heritage properties through the application of consistent World Heritage management principles. There are significant penalties for actions taken affecting World Heritage properties in contravention of the Act. State agencies are responsible for the day-to-day management of the majority of Australian World Heritage properties.

The Commonwealth will continue to consult with the States, Territories and major stakeholders before nominating properties to the World Heritage List. The EPBC Act requires the Commonwealth to use its best endeavours to reach agreement with States and Territories and owners and occupiers on the submission of the property for World Heritage listing and the management arrangements prior to the property being nominated. A cooperative approach to nomination and management clearly facilitates the best protection for a World Heritage property. However, the Commonwealth will always retain the legal capacity to nominate a property to the World Heritage List in the absence of consent from the relevant State. In addition, in the case of a property not on the World Heritage list where some or all the World Heritage values are under threat, the Commonwealth is able to protect the values by declaring the property to be a declared World Heritage property under the EPBC Act.

**Recommendation 10**

**The Commonwealth should not devolve responsibility for management of World Heritage areas to the States without ongoing supervision and reporting requirements.**

**Recommendation 11**

**The Commonwealth should establish binding national management principles to effectively protect and preserve World Heritage areas. These principles should provide the basis for mandatory management plans for all Australian World Heritage areas.**

The EPBC Act establishes World Heritage management principles. Under the EPBC Act the Minister must make management plans for World Heritage properties which are entirely in Commonwealth areas. For properties located within a State or Territory the Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in cooperation with the State or Territory.

#### **Recommendation 12**

**The Government should amend the World Heritage Properties Conservation Act 1983 to ensure that the Act applies to a defined and adequate buffer zone around World Heritage properties which takes into account the natural ecosystem to which the World Heritage area belongs.**

Not accepted.

Boundaries of World Heritage properties are determined to protect the World Heritage values of that property. The World Heritage Properties Conservation Act 1983 has now been repealed and replaced by the EPBC Act. The protection provided by the EPBC Act applies to actions both within and outside the World Heritage property which are likely to have a significant impact on the World Heritage values of the property.

#### **Recommendation 13**

**The Commonwealth should entrench the IUCN Guidelines for Protected Area Management Categories in national legislation. In connection with World Heritage areas the Commonwealth should ensure that exploitation and occupation of such areas is eliminated and prevented.**

Accepted.

The proclamation made under the EPBC Act declaring a Commonwealth reserve must assign the reserve to an IUCN category such as national park or wilderness area. Regulations made under the EPBC Act prescribe the Australian IUCN reserve management principles which identify the purpose for which a Commonwealth reserve assigned to a particular category IUCN category is primarily managed.

The EPBC Act provides up-front protection for World Heritage properties, and improved management for all World Heritage properties through the application of consistent World Heritage management principles.

#### **Recommendation 14**

**The Commonwealth should prohibit any activity that would irreparably harm potential World Heritage areas within Australia at any time prior to completion of the assessment process.**

Properties not yet on the World Heritage List but specified in a declaration under the EPBC Act have the protection of declared World Heritage properties for the period for which the declaration is in force.

**Recommendation 15**

**The Commonwealth should ensure that an assessment of World Heritage values is required in the early stages of the Regional Forests Agreement (RFA) process.**

The RFA process involved Comprehensive Regional Assessments, which included assessment of potential world heritage values in RFA areas before Agreements were developed.

**Recommendation 16**

**The Commonwealth should retain management responsibility for listed Ramsar wetlands in order to ensure that its obligations under the Convention are met.**

The EPBC Act provides strong protection for Ramsar wetlands while recognising the role of States and Territories in day to day management of sites.

**Recommendation 17**

**The Government should make regulations under section 69 of the *National Parks and Wildlife Conservation Act 1975* to require Commonwealth assessment and approval of all proposed developments and uses of listed wetlands that are likely to have a significant impact on their environment.**

Subject to limited exceptions, the EPBC Act, which replaces the *National Parks and Wildlife Conservation Act 1975*, requires that a person must not take an action that is likely to have a significant impact on the ecological character of a declared Ramsar wetland without the approval of the Commonwealth Environment Minister.

**Recommendation 18**

**The Government should amend the EPIP Act to require that all decisions made under the legislation are consistent with the principles of ESD as defined in Section 6(2) of the *New South Wales Protection of the Environment Administration Act 1991*. The legislation should contain a positive duty on decision-makers and other participants in EIA processes, to carry out functions provided under the legislation to meet the objective of ecologically sustainable development.**

The EPIP Act has been superseded by the EPBC Act. The objects of the EPBC Act include the promotion of ecologically sustainable development. The EPBC Act requires the principles of ESD to be taken into account when considering project approvals. In addition the EPBC Act requires the Environment Minister to specifically take into account the precautionary principle in making a range of important decisions under the Act.

**Recommendation 19**

**The Commonwealth should use its powers to adopt national standards for environmental impact assessment of a project proposal likely to have a significant impact on biological diversity in Australia.**

The EPBC Act focuses Commonwealth interests on the matters of national environmental significance. This arrangement provides strong protection for key components of Australia's biological diversity. The EPBC Act enables the Commonwealth to accredit State and Territory environment assessment processes provided they meet stringent standards. Through this accreditation process the Commonwealth is able to ensure the standards of environmental assessment in States and Territories will meet best practice benchmarks.

**Recommendation 20**

**The Commonwealth should establish, under Article 8 of the Convention of Biological Diversity, in conjunction with the external affairs power, national regulation for approvals requirements and standards in connection with proposed projects that may adversely impact on biological resources important for the conservation of biological diversity and for processes and categories of activities identified as likely to have a significant adverse effect on the conservation of biological diversity.**

The EPBC Act provides protection for key components of Australia's biodiversity by requiring approval from the Environment Minister for any action that has, will have or is likely to have a significant impact on matters of national environmental significance.

**Recommendation 22**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include public involvement in the determination of the environmental significance of proposals.**

The EPBC Act provides for extensive public input to the environmental impact assessment process. State and Territory environmental impact assessment processes can only be accredited if they satisfy best practice benchmarks, including requirements for public consultation.

**Recommendation 23**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include the right of any person to refer a proposal to the relevant authority for determination as to whether a proposal is likely to have a significant effect on the environment.**

The EPBC Act places the onus on proponents to refer actions that may require approval from the Commonwealth Environment Minister. In addition State and Territory agencies and Commonwealth agencies may refer a proposal to the Environment Minister. If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought by an interested person to prevent or stop the action.



**Recommendation 24**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include open standing provisions to allow public access to the courts in order to test the validity of governmental decision and restrain breaches of the law.**

The EPBC Act contains appropriately broad standing provisions.

**Recommendation 25**

**The Commonwealth should increase funding for the Environmental Defender's Offices and peak conservation groups. Funding for the Environmental Defender's Offices should not be restricted in its use to non-litigation activities.**

Not accepted.

The Commonwealth already provides substantial funding to the Environmental Defender's Office to provide advice, education, resource materials, promotion and law reform/research activities for the benefit of the general public. Grants are also provided to environment and heritage groups across Australia to cover administrative costs associated with their environmental work.

**Recommendation 27**

**In determining the substance of comprehensive and binding national standards for the protection of the Australian environment, the Commonwealth should engage in extended consultations with State and Territory Governments, the wider community and industry.**

The Commonwealth already engages in extensive consultation with the wider community and industry in developing the basis for any comprehensive and binding national standards for the protection of the environment.

**Recommendation 28**

**The Commonwealth should take advantage of existing State and Territory administrative arrangements and expertise with respect to the environment (including practices, procedures and processes) by establishing a method for accreditation of these existing arrangements in cases where they provide at least as much protection for the environment as the established national standards.**

Accepted.

The EPBC Act provides a mechanism for accrediting State environment assessment processes and approvals where appropriate and where such processes meet 'best practice' criteria. These requirements are set out in the EPBC Regulations and were developed in consultation with State and Territory governments and the community. The Commonwealth has entered into bilateral agreements with Tasmania, Western Australia and the Northern Territory. Following its recent release for public comment, the bilateral agreement with Queensland is expected to be completed early in 2003. The Commonwealth is working with the remaining States and Territories to advance the development of bilateral agreements.

**Recommendation 29**

**The Commonwealth Government should ensure that it retains the right to act, including through legislation, on any environmental issue over which it has power, notwithstanding anything contained in the 1992 Intergovernmental Agreement on the Environment or the 1998 Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment.**

The Government intends to act in accordance with COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. It should be noted that both the Heads of Agreement and the EPBC Act enable the Commonwealth to prescribe additional matters of national environmental significance, after appropriate consultation with the States and Territories.