Chapter 2

Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014

2.1 This chapter discusses the key issues raised in submissions and evidence in relation to each of the five schedules of the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 (the Bilateral Agreement Implementation Bill).

Schedule 1—Referral of controlled actions

The purpose of Schedule 1

2.2 The purpose of Schedule 1 of the bill proposes to make amendments to Part 7 (Deciding whether approval of actions is needed). This will clarify that a proponent will not need, or be able to make, a referral to the Commonwealth for an action that is or could be covered by an approval bilateral agreement.[1] The amendments aim to remove duplication in environmental assessments under the one stop shop policy. The Department of the Environment (the department) stated that this will provide additional certainty to proponents and improve the operation of the one stop shop reforms.[2]

The one stop shop reforms

2.3 Many of the submissions received by the committee opposed the one stop shop reforms.[3] It was argued that the reforms will not deliver their stated goals. For example, Places You Love Alliance stated that the one stop shop approach is a 'fundamentally flawed policy'.[4] It was claimed that the one shop stop policy will not achieve its stated aims as:

- it will add complexity to approval processes;
- it will not result in any efficiency gains;
- currently, no state or territory has sufficient resources or the appropriate environmental processes in place to adequately assess actions that may impact on national environmental standards;

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1 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 7.

2 Department of the Environment, *Submission 33*, p. 6.

3 See, for example, Dr Chris McGrath, *Submission 1*; Humane Society International, *Submission 31*; Australian Conservation Foundation, *Submission 46*; Australian Network of Environmental Defender's Offices, *Submission 49*; the Wentworth Group of Concerned Scientists, *Submission 53*; Environmental Justice Australia, *Submission 54*; Places You Love Alliance, *Submission 55*.

4 Places You Love Alliance, *Submission 55*, p. 2.

- it will result in a diminution of current environmental standards pertaining to matters of national environmental significance; and
- it will create potential conflicts of interest.

2.4 In contrast, Australian Forest Products Association, Association of Mining and Exploration Companies (AMEC), the Premier of Queensland, the Minerals Council of Australia, the Business Council of Australia and the Australian Petroleum Production & Exploration Association Limited supported the amendments proposed in this schedule.[5] It was noted that there has been duplication in assessment processes which has required extra resources and resulted in time delays for proponents.[6]

2.5 The department also pointed to the benefits of the one stop shop approach and stated:

> The one stop shop for environmental approvals is designed to address business and community feedback that many environmental processes and protections are duplicated between jurisdictions.
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> Further, a lack of consistency between the Commonwealth and a state or territory can lead to inconsistencies in processes and outcomes and conflicting timeframes. This makes navigating the complex suite of environmental regulations across levels of government more difficult for business, community groups and others.
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> Duplication in environmental regulation between the Australian Government and states and territories adds an unnecessary burden to business, increasing the administrative and compliance costs and delaying projects. The one stop shop reforms will lift that burden where the state process meets the *National Standards for Accreditation of Environmental Approvals*. This will provide faster approvals and deliver productivity benefits to business.[7]

2.6 The discussion below addresses the issues raised in evidence relating to Schedule 1 of the Bilateral Agreement Implementation Bill.

Complexity

2.7 Submitters argued that rather than a streamlined system, the proposed one stop shop approach would, in fact, result in a more complex process. In effect, there will be an 'eight stop shop' with the accreditation of state and territory approvals

5 Australian Forest Products Association, *Submission 4*; Association of Mining and Exploration Companies, *Submission 8*; Premier of Queensland, *Submission 13*; Minerals Council of Australia, *Submission 32*; Business Council of Australia, *Submission 45*; Australian Petroleum Production & Exploration Association Limited, *Submission 52*.

6 See, for example, Association of Mining and Exploration Companies, *Submission 8*, p. 2.

7 Department of the Environment, *Submission 33*, p. 4; see also Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

processes. It was also noted that the state and territory environmental protection regimes are quite different in scope, function and implementation.[8]

2.8 It was argued that the accreditation of state and territory environmental processes would have the effect of shifting from a single Commonwealth approvals process to the eight separate processes used by the respective jurisdictions and resulting in further complication of the approvals process rather than the streamlining of it. For those proponents located in more than one jurisdiction, the complexity would be significant as they would have to make themselves aware of the various processes applicable in each jurisdiction.[9] For example, the Australian Network of Environmental Defender's Offices (ANEDO) commented:

> Hasty bilateral agreements to delegate Commonwealth government powers to State[s] and Territories, as proposed by the Federal government's 'one stop shop' approach and facilitated by the Bill, may in fact, create complexity and fragmentation with a confusing 'eight stop shop' of different State and Territory systems as Commonwealth requirements are 'bolted on' to the different state legislative structures.[10]

2.9 Mr Glen Klatovsky of the Places You Love Alliance similarly stated:

> The one-stop shop is going to be at least an eight-stop shop. We will see matters of national environmental significance handed to eight separate jurisdictions with eight separate individual and different legislative and regulatory regimes…Once you have local government and other panels available you start to multiply even further.[11]

2.10 Dr Chris McGrath also stated that, in his opinion, the proposed changes to the EPBC Act would increase the complexity of the approvals process, not simplify it.[12]

2.11 By contrast, the committee heard from industry, for example AMEC and the Minerals Council of Australia, that currently proponents are faced with duplication of

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8 See Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, pp 1, 3. Mr Warne-Smith, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 11; Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 12; Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, pp 25, 27; Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 34.

9 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, pp 1, 3; Mr Warne-Smith, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 11; Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 12; Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, pp 25, 27; Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 34.

10 Australian Network of Environmental Defender's Offices, *Submission 49*, p. 1.

11 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 8.

12 Dr Chris McGrath, *Submission 1*, p. 2; Dr Chris McGrath, private capacity, *Committee Hansard*, 10 June 2014, p. 67.

processes.[13] At present, proponents are required to have proposed actions assessed by the state or territory government and also have them approved, in certain circumstances, by the Commonwealth. A proponent with interests spanning across jurisdictions may be made subject to the processes of nine separate jurisdictions, comprising the Commonwealth, the six states and the two territories. At the very least, a proponent must now consider two separate processes, the state process and the Commonwealth process.[14]

2.12 It was argued that, from the proponent's perspective, the proposed changes will simplify the process, eventually allowing a proponent to make a single application to a state or territory decision maker which will, in turn, hand down a single integrated approval and assessment decision.[15]

2.13 Dr Rachel Bacon, Department of the Environment, responded to comments on complexity stating:

> On the question of whether there would end up being eight one-stop shops, we have been looking at the question from the perspective of a proponent. So, for example, an individual proponent generally would be dealing with one statutory approval pathway. For example, a mining company would be dealing with a statutory assessment and approval process in relation to mining. For all the states and territories that we have been talking to, that mining company will be dealing generally with a single statutory process for assessment and approvals in relation to mining activity…[16]

Efficiency gains and cost reduction

2.14 Some submitters did not support the argument that the one stop shop policy would result in efficiency gains and cost reductions. It was acknowledged by both Mr Klatovsky of Places You Love Alliance and Ms Rachel Walmsley of ANEDO that there are efficiencies to be gained through EPBC Act.[17] Ms Walmsley went on to comment that finding efficiencies in the EPBC Act was the preferred option rather than the one stop shop policy and stated that:

> …the Hawke review actually put forward a whole package of ways in which federal environmental law could be strengthened and made more efficient. I think that is the best starting point for addressing questions about efficiency and how to better coordinate the laws in Australia. I do not think

13 Mr Graham Short, AMEC, *Committee Hansard*, 10 June 2014, p. 21; Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 40, 44; Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 60.

14 Mr Graham Short, AMEC, *Committee Hansard*, 10 June 2014, p. 21; Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 40, 44; Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 60.

15 Mr Graham Short, AMEC, *Committee Hansard*, 10 June 2014, p. 21; Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 40, 44; Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 60.

16 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 44.

17 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 6.

> handing over powers to states or territories is going to effectively protect Australia's matters of national environmental significance.[18]

2.15 In addition, the Wentworth Group of Concerned Scientists commented that industry groups have not been able to produce sufficient evidence that systemic delays by Commonwealth approvals are having a significant impact on economic development.[19] The Wentworth Group of Concerned Scientists stated that 'efficiency savings could be achieved by better coordinating assessment processes, without compromising approval responsibilities'.[20]

2.16 Dr McGrath added his view and commented:

> The existing system of assessment bilaterals is really dealing with the costs and delay issues from a proponent's perspective as much as you can. The final decision maker really does not add much in costs or delays from a proponent's perspective, so the approval bilaterals are a bit of smoke and mirrors, really. The real money is in the assessment. The real delay is in the assessment. And that is already done in conjunction with states under the assessment bilaterals. Who makes a final decision does not make a big deal of difference.[21]

2.17 Dr McGrath also stated that most medium to large proposed actions are referred to the Commonwealth as a matter of course early in the process. The approvals process runs in parallel to the assessment process and in the majority of cases it only takes a few weeks. He mentioned that the only requirement is that the relevant form needs to be completed.[22]

2.18 However, Ms Melanie Stutsel of the Minerals Council of Australia explained that the requirement of filling in an extra form is not necessarily a simple process. Rather, an application for approval may involve as much work as an assessment application. Ms Stutsel stated:

> …when you go through your referral process, the matters that you are required to consider in the environmental impact assessment might be different matters or might be differently framed from the matters that are in your state process. You might have produced some 400,000 pages of environmental assessment…and you might have to go back and do it again. We have seen that with our largest project. It might be that you only need to provide a portion of the material you have provided to the state or it might be that you need to provide the material in a different format. And when you provide that there is often a delay process while those matters are considered and the adequacy and comprehensiveness of what you have

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18 Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 31.

19 Mr Peter Cosier, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, pp 52, 56.

20 Wentworth Group of Concerned Scientists, *Submission 53*, p. 5.

21 Dr Chris McGrath, private capacity, *Committee Hansard*, 10 June 2014, p. 67.

22 Dr Chris McGrath, private capacity, *Committee Hansard*, 10 June 2014, p. 68.

> provided are considered. Then we often find that there is a request for additional information to be provided. So that will create an additional information burden but also an additional time delay.[23]

2.19 Mr Graham Short, AMEC, provided the following example of delays under the current arrangement:

> The delay has occurred as a result of the federal agency coming back through the state and territory regulatory agency requesting further information that has already been provided to the state or federal agency and, as I say, doubling up on the information as well as—depending on when the matter of national environmental significance has been identified—the federal agency being brought into the process. We have certainly heard of circumstances where the process has been going through the state or territory government and then it has been identified that there is national environmental significance, which then triggers the EPBC Act and that process then starts again. So all the information that has already been provided and the process that has been gone through for state or territory approval then commences through the federal process, therefore there is the delay in that.[24]

2.20 The Minerals Council of Australia referred to the cost-benefit analysis by Deloitte Access Economics which found:

> …the implementation of approval bilateral agreements along with administrative reforms would result in significant net benefits to both the Australian Government and project proponents. Specifically, the estimated cost savings over a 10 year period include:
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> - $378 million in net benefits for the Australian Government.
> - $90 million in net benefits for the state and territory governments.
> - $745 million in net benefits for proponents.[25]

2.21 A further issue raised was that of litigation and the possible consequential delays to the approvals process.[26] For example, Environmental Justice Australia stated:

> Rather than simply creating 'flexibility' the Bill also creates considerable uncertainty that creates a greater risk of litigation to resolve disputes.[27]

2.22 Dr Bacon pointed out that efficiencies will be gained by reducing duplication in the assessment and approvals process. She explained the problem of duplication:

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23 Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 60.

24 Mr Graham Short, AMEC, *Committee Hansard*, 10 June 2014, p. 21.

25 Minerals Council of Australia, *Submission 32, Attachment 1*, p. 5.

26 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 5; Dr Chris McGrath, private capacity, *Committee Hansard*, 10 June 2014, p. 70; Dr Yung En Chee, *Submission 36*, p. 7; Environmental Justice Australia, *Submission 54*, p. 9.

27 Environmental Justice Australia, *Submission 54*, p. 9.

> Currently there is a situation where state and territory decision makers or regulators undertake assessments and approvals in relation to environmental matters for particular projects. Where those particular projects may also trigger the EPBC Act—in other words, where there may be a significant impact on matters of national environmental significance—essentially the Commonwealth regulator, located in the Department of the Environment, comes into the process in addition to the state or territory regulator. It looks at often much of the same types of material or the same types of environmental assessment material and surveys et cetera but does that from the perspective of looking specifically at what the potential impacts might be on matters of national environmental significance. Essentially the state or territory regulator is looking at the whole-of-environment impacts, and the role of the Commonwealth regulator is to look at the eight or nine specific enumerated matters of national environmental significance under the Commonwealth legislation, so essentially the proponent is dealing with two regulators as part of the same project approval process.[28]

2.23 Dr Bacon went on to provide an example of a situation where removing duplication resulted in substantial cost savings:

> An example of reducing the cost through duplication comes from the recent accreditation of the NOPSEMA [National Offshore Petroleum Safety and Environmental Management Authority] process, which is the offshore petroleum, oil and gas agency. Their processes have been accredited under a strategic assessment that was recently finalised. The estimated cost savings annually from that process are in the order of $120 million per year. So, they are the kinds of savings in that scenario that can derive from reducing duplication in these kinds of circumstances.[29]

2.24 Dr Bacon went on to conclude:

> Our analysis…is that probably the greatest source of savings derives from avoiding the delay of having a second approval where there is a second approval that occurs after a state or territory approval and the second and subsequent Commonwealth approval comes later.[30]

Maintenance of national environmental standards

2.25 Of particular concern to many submitters was that the one stop shop policy would result in the potential diminution of environmental standards. However, the department has strongly emphasised the need to maintain high environmental standards and stated that the proposed legislation will not have the effect of diluting environmental protections. The department stated:

> The reform will maintain high environmental standards while delivering an improved means to achieve better outcomes for business. The approval

28 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 44.

29 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 47–48.

30 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 51.

> bilateral agreements will contain explicit and robust assurance processes, to provide confidence to the Commonwealth Government and the public that the standards required of the Commonwealth under the EPBC Act are being met.[31]

2.26 The emphasis on better outcomes for business as the basis of the reforms was disputed by submitters who argued that environmental laws are an essential element of a healthy society and should not be seen as burden on business. ANEDO stated that it:

> …strongly opposes moves to reduce environmental regulation merely to ease perceived pressure on business and fast-track major development. Fast approvals that deliver poor quality, high risk or unsustainable development are not in the public interest. ANEDO supports a strong Commonwealth role in protecting matters of national environmental significance.[32]

2.27 Some submitters also argued that there is a need to keep national protection measures for matters that effect Australia's international obligations and matters of national significance, such as the mining and milling of uranium, biodiversity conservation and the protection of Australia's water resources. The failure to do so may result in a failure to adhere to the standards resulting in direct and indirect costs to present and future generations.[33]

2.28 Furthermore, as noted by Mr Klatovsky, there is evidence from the United States and the European Union that good environmental protection laws actually deliver substantially higher public financial benefits, many multiples higher, than compliance costs.[34]

2.29 The main argument put forward by opponents to the Bilateral Agreement Implementation Bill was that environmental standards would be diluted as states and territories do not have the same standards as those contained in the EPBC Act and are not capable of assessing impacts of projects on matters of national environmental significance and the national interest.[35] Dr McGrath, for example, commented

> I just cannot see how the approval bilaterals are consistent with the standards of accreditation that the department published a few months ago. When you read the standards of accreditation it reads like the

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31 Department of the Environment, *Submission 33*, p. 4; Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40. See also The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 2.

32 Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 1; see also Australian Network for Environmental Defender's Offices Inc, *Submission 49, Attachment 2*, 'COAG Environmental Reform Agenda, ANEDO Response—in defence of environmental laws', May 2012, p. 4.

33 See, for example, Dr Yung En Chee, *Submission 36*, pp 6–7; Ms Anne Daw, Round Table for the Roadmap of Unconventional Gas Projects in South Australia, *Submission 37*, p. 1; Medical Association for Prevention of War, *Submission 43*, p. 6; Friends of the Earth Australia, *Submission 44*, pp 2–3; Australian Conservation Foundation, *Submission 46*, pp 4–5.

34 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 1.

35 See, for example, The Wilderness Society, *Submission 56*, p. 3.

> Commonwealth thinks that the states are going to do exactly what the EPBC Act requires but under their legislation. When you read the approval bilaterals and you understand the state legislation, it is clear that there is nothing like that from the state's perspective. They are going to take their existing laws and pretty well just say, 'Well, we'll consider the Commonwealth matters of national and environmental significance.' How you enforce the requirements against the state government I find very, very difficult to foresee.[36]

2.30 The Wentworth Group of Concerned Scientists pointed to the proposed Queensland and New South Wales offsets policies as examples of where state policies breach the national standard. In addition, the Wentworth Group pointed to the winding back of laws to protect native vegetation from land clearing.[37] Mr Sydes, Environmental Justice Australia, also pointed to threatened species standards where it had been found that no state or territory met the standards of the EPBC Act.[38]

2.31 Submitters, including the Wentworth Group of Concerned Scientists, raised concerns about accreditation of local government to determine whether a development is likely to have a significant impact on a matter of national environmental significance without sufficient standards being put in place and without local government receiving the necessary expertise or resources. Ms Walmsley, ANEDO, commented:

> …local governments are probably the least resourced of all levels of government. They have a huge workload determining their local development assessments and so forth. Many councils do an excellent job on minimal resources, but they simply do not have the capacity or the resources to deal with that additional level. They do not have the mandate to consider international obligations. This bill provides that councils may technically approve an EPBC decision. We would say that that is inappropriate. They do not have the resources. They do not have the expertise. It is a role for the Commonwealth.[39]

2.32 In addition to these concerns, Environmental Justice Australia noted that the proposed amendments remove the protection that EPBC Act requirements must be contained in law and create considerable uncertainty about how the new arrangements will work. Environmental Justice Australia went on to state:

> To pass to Ministers of the States and Territories the power to make guidelines that are effectively binding determinations of rights and responsibilities for the purposes of the EPBC Act, without even the

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36 Dr Chris McGrath, private capacity, *Committee Hansard*, 10 June 2014, p. 70.

37 Wentworth Group of Concerned Scientists, *Submission 53*, p. 2; see also Mr Peter Cosier, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, p. 53.

38 Mr Sydes, Environmental Justice Australia *Committee Hansard*, 10 June 2014, p. 13; See also Ms Ruchira Tulukdar, Australian Conservation Foundation, *Committee Hansard*, 10 June 2014, p. 2. Australian Network for Environmental Defender's Offices, *Submission 49*, p. 7.

39 Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 28.

> safeguards of the State and Territory Parliaments is a unique and very significant step.[40]

2.33 The department provided an extensive response to concerns raised about possible diminution of environmental standards. The department noted that draft approval bilateral agreements with New South Wales and Queensland had been completed and were open for public consultation. The department provided information about the 'explicit and robust' assurance processes contained in the bilateral agreements that will 'provide confidence to the community and governments that the standards required of the Commonwealth through its international obligations and the Environment Protection and Biodiversity Conservation Act are being met'.[41]

2.34 Dr Bacon explained further that each of the draft bilateral agreements contain provisions for the review and audit of the operation and implementation of the agreements. For example, there are provisions in relation to an annual risk-based audit or evaluation of the agreement and its operation. Dr Bacon also noted that there is also a statutory requirement under the EPBC Act for there to be five-yearly reviews of the operation and of approval bilateral agreements. There is also the ability for either party to the agreement to initiate an unscheduled audit or expert review or evaluation of the operation of the agreement. For example, if the Commonwealth had a particular concern with the operation of an approval bilateral it could initiate an audit or evaluation of any particular issue.[42]

2.35 Dr Bacon went on to note that, in relation to governance arrangements, both agreements provide for the establishment of a senior officers committee for overseeing the implementation and smooth operation of the agreements. This committee would be the first port of call if there were any issues or concerns with how the agreements were operating or in relation to a particular project or community concern. Should discussions within the senior officers committee fail to resolve a matter, there are a series of escalating steps that are built into each agreement and that are consistent across both agreements. The final step in this process is the 'calling in' of a project. Dr Bacon stated:

> In the very rare scenario where taking that formal step around the issuing of a notice does not resolve a particular issue, there is the ability for the Commonwealth minister to call in a particular project if there is a concern that the state process might be heading towards an approval where the requirements for decision making set out in the approval bilateral

40 Environmental Justice Australia, *Submission 54*, p. 2; see also Australian Conservation Foundation, *Submission* 46, p. 6; Australian Network for Environmental Defender's Offices, *Submission 49*, p. 6.

41 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

42 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 42, 49.

> agreement were not going to be met. If there was a risk of that occurring, the Commonwealth minister would be able to call in a particular project.[43]

2.36 The bilateral agreements also provide for an opt out clause for the state decision maker to refer a project back to the Commonwealth.[44]

2.37 Finally, Dr Bacon stated if there were a very strong and abiding concern about the implementation of an approvals bilateral agreement, the minister, or a state minister, would maintain a right to suspend or cancel all or part of an accredited arrangement.[45]

2.38 In relation to concerns about accreditation of state and territory agencies, Dr Bacon stated that:

> The requirements in the EPBC Act are quite clear that the Commonwealth minister cannot accredit a state or territory process unless the minister is satisfied that that process cannot result in unacceptable or unsustainable outcomes on matters of national environmental significance. That is one of the key standards that is set out in the legislation.[46]

2.39 Dr Bacon went on to comment that for a state or territory process to be accredited, it needs to be able to demonstrate how the different standards in the EPBC Act would be met. They include things like ensuring that there is an adequate assessment of matters of national environmental significance and ensuring that there are no unacceptable or unsustainable impacts on matters of national environmental significance.[47] If a state or territory accredited process were to be changed, the agreement would need to be redone 'with the consequent need to undergo the statutory consultation period again as well as the disallowance process again'.[48]

2.40 Ms Kushla Munro of the department also commented on this point and noted that currently, the EPBC Act requires that approval decision makers meet a technical definition of a state or an agency of a state. As a consequence:

> Whether a particular decision maker meets this test is actually quite arbitrary. For example, in some states they will meet this definition and in others they will not. Therefore, in this proposed amendment, it looks at: whether a particular state process is accredited depends on whether they actually meet the higher environmental standards rather than the identity and legal establishment of the decision maker. That is the reason why that amendment has been proposed.[49]

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43 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 42–43, 49

44 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 47.

45 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

46 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 47.

47 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 44.

48 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 48.

49 Ms Kushla Munro, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

2.41 Dr Bacon also explained to the committee that the standards to be met for a process to be accredited are detailed, with 112 different standards covering different aspects of the assessment process, the approvals process, and the transparency elements that must be put in place for a particular process. Dr Bacon also noted that these considerations will be either mandatory or relevant when the minister comes to make the accreditation decision.[50]

2.42 In relation to state and territory standards, Dr Bacon stated that 'our initial analysis is that states are well positioned due to the undertakings that they have made and, in Queensland, the amendments that have been proposed'. However, the department could not prejudge the minister's statutory accreditation decision.[51] In addition, Dr Bacon noted that:

> …there are a range of legislative amendments that the Queensland government are proposing consequent to the types of undertakings that they have made in that draft agreement that would specifically refer in their legislation to matters of national environmental significance and the need to undertake assessment and so on in relation to matters of national environmental significance.
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> The other example is that also in that Queensland legislation there is an amending provision that removes the restriction that is currently in place under Queensland legislation around judicial review. There is a restriction on the ability of members of the community to seek judicial review of decisions made under the particular process, one of the processes that is proposed for accreditation under the Queensland agreement. One of the things Queensland is doing is removing that restriction on judicial review as part of its legislative amendments that are designed to support implementation of an approvals bilateral agreement.[52]

2.43 In addition, Dr Bacon pointed to the transparency undertakings in the agreements requiring the publication of information at each step of the process undertaken by the states.[53] This will assist with compliance. A further matter noted by the department was the creation of requirements for accessibility of environmental data and information. Dr Bacon commented that greater accessibility of environmental data will: provide benefits to the business community through the availability of environmental information gathered during individual environment assessment processes; better inform decision making, for example by better informing regulators about cumulative impacts; and assist governments more broadly to make better informed and better targeted decisions around, for instance, investment or various

50 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 48–49.

51 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 50.

52 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 41.

53 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

programs that are designed to have environmental benefit in the areas of greatest need.[54]

2.44 Ms Ilona Millar of the Wentworth Group of Concerned Scientists acknowledged the benefits of greater transparency:

> …the provision for public information and open access protocols is going to assist with the level of transparency…[and] increased transparency between the states and the feds would be of benefit for the review of development applications and projects that trigger both federal and state assessment processes.[55]

Capacity and readiness of states and territories to implement approvals processes

2.45 A further matter raised in submissions was the capacity of states and territories to take extra responsibilities envisaged under the one stop shop approach. Many submitters argued that state and territory environmental agencies are already working above capacity, creating delays in the processing of assessment applications. Further responsibilities for assessment and approval could exacerbate these problems resulting in ongoing pressure to meet the relevant deadlines and may lead to a less vigilant approach to the application of environmental standards.[56] For example, the Australia International Council on Monuments and Sites (ICOMOS) Secretariat stated:

> There is also no indication that appropriate resources will match the new responsibilities – the danger being that States will take on an additional burden without the provision of additional resources, straining further what are already over-stretched heritage systems. Both of these could result in delay in assessment and approval, a decline in the standard of decision-making and decline in the protection of the environment.[57]

2.46 Dr Yung En Chee also argued that as states and territories currently lack the capacity to deliver appropriate assessment, compliance, enforcement and auditing processes on matters for which they are currently responsible, it is unlikely that they will have sufficient capacity to deal with the additional burden of an approvals process based on national environmental standards.[58]

2.47 Mr Klatovsky, Places You Love Alliance, also commented that the states and territories lack capacity to undertake the extra responsibilities and that there is 'ample evidence that the states are failing in even the most basic elements of environmental

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54 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 45.

55 Ms Ilona Millar, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, p. 52.

56 See, for example, *Mulgoa Valley Landcare Group Inc, Submission 14*, p. 2; Hunter Environmental Lobby Inc, *Submission 15*, p. 2; Urban Bushland Council WA Inc, *Submission 16*, p. 2; Lock the Gate Alliance, *Submission 24*, p. 3; Owen Noonan, *Submission 35*, p. 2; Places You Love Alliance, *Submission 55*, p. 3.

57 Australia International Council on Monuments and Sites, *Submission 58*, p. 1.

58 Dr Yung En Chee, *Submission 36*, p. 7.

compliance'.[59] This view was supported by the Australian Conservation Foundation which pointed to multiple state auditor-generals' reports, which found that state governments have been struggling to fulfil their existing statutory obligations.[60]

2.48 ANEDO suggested that prior to entering into approval bilateral agreements with the state and territory governments, the Commonwealth should ensure that states and territories have sufficient capacity to adequately complete their assessment tasks.[61] Further, the Queensland Murray-Darling Committee asserted that before delegating environmental approval powers to the state and territory governments the Commonwealth needs to conduct a comprehensive audit of the environmental effectiveness of and compliance by the state and territory governments.[62]

2.49 During the Senate Budget Estimates 2014–15, Dr Bacon referred to the inclusion of clause 10 in the New South Wales draft approval bilateral agreement, a transitional arrangement allowing for the embedding of officers of the department into the Department of the Environment in New South Wales to help with the approvals process. It is expected that these embedded officers will assist in building capacity and providing relevant expertise.[63]

2.50 Dr Bacon also commented that much of the work involved with the determination of approvals is already being completed at the assessment stage and therefore there is currently a duplication of work.[64] Dr Bacon stated:

> In relation to the capacity of states, there are currently state and territory processes in place that deliver assessments that the Commonwealth routinely and regularly relies on in decision making processes in order to support Commonwealth approvals. So the Commonwealth already routinely relies on that kind of assessment function undertaken by states.[65]

59 Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 1.

60 Australian Conservation Foundation, *Submission 46*, p. 3.

61 Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 2.

62 Queensland Murray-Darling Committee, *Submission 50*, p. 2.

63 Draft Approval Bilateral Agreement between NSW and the Commonwealth cl. 10; Dr Rachel Bacon, Department of the Environment, *Budget Estimates 2014–15*, *Committee Hansard*, 27 May 2014, p. 43.

64 Dr Rachel Bacon, Department of the Environment, *Budget Estimates 2014–15*, *Committee Hansard*, 27 May 2014, p. 44.

65 Dr Rachel Bacon, Department of the Environment, *Budget Estimates 2014–15*, *Committee Hansard*, 27 May 2014, p. 44.

Potential conflicts of interest

2.51 A further matter raised in evidence was the potential for conflicts of interest to arise under the one stop shop policy.[66] It was argued that states are frequently the proponents of action referred to the Commonwealth minister under the EPBC Act. The Australia Conservation Foundation (ACF) stated that the delegation of decision making under the EPBC Act:

> … would create a situation in which a state government could be the proponent assessor, decision-maker, and compliance enforcer of a development proposal which impacts a MNES.[67]

2.52 The ACF concluded that the 'conflict of interest in this situation is clear'. In addition, the ACF argued that, even if the state were not the proponent, 'the financial benefits to the state that would flow from a proposed project, whether through royalties or investments, [would] make it extremely difficult for a state to make an impartial decision in the national interest'.[68]

2.53 In this regard, submitters pointed to decisions made by the Queensland Coordinator-General which showed a bias for economic development and the ruling of the Western Australian Supreme Court in relation to the gas plant at James Price Point in the Kimberley which found conflicts of interest.[69]

2.54 Mr Brendan Sydes of Environmental Justice Australia concluded that in relation to conflicts of interest 'the whole model is flawed from that point of view'. However, Mr Sydes acknowledged that the two draft bilateral approval agreements require the state-based decision maker to notify the Commonwealth if there is a possibility of a conflict of interest. He went on to state that 'then it is up to the Commonwealth to determine whether they do anything about it. So it is a fairly weak provision, for a start.' Mr Sydes concluded that:

> This all just reinforces the point that it is very difficult for the Commonwealth to exercise leadership from a distance. They are going to be very heavily dependent upon state governments and state based approval processes to generate the information that triggers their oversight responsibilities, and it is a hopeless situation that is just not going to work.[70]

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66 See, for example, Dr Catherine Pye, *Submission 10*, p. 2; Mr Steve Burgess, *Submission 17*, p.1; Ms Anne Daw, Round Table for the Roadmap of Unconventional Gas Projects in South Australia, *Submission 37*, p. 3; The Green Institute, *Submission 39*, p.1; Medical Association for Prevention of War, *Submission 43*, p. 2; Ms Belinda Noonan, *Submission 47*, p. 1; Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 9. See also, Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 17.

67 Australian Conservation Foundation, *Submission 46*, pp 3–4.

68 Australian Conservation Foundation, *Submission 46*, p. 4.

69 Australian Conservation Foundation, *Submission 46*, p. 4; Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, pp 1–2; Mr Chris McGrath, *Committee Hansard*, 10 June 2014, pp 69, 72.

70 Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 17.

2.55 Dr Bacon responded to these concerns. In the first instance, Dr Bacon highlighted the fact that conflicts of interest may even arise under the current legislation:

> …under the current arrangements, where the Commonwealth Defence minister may wish to undertake an activity on a particular area of land or as a Commonwealth action, the Commonwealth environment minister would be making the decision. So, as with any government, there are institutional checks and balances that are in place through the way institutions are set up and the way different portfolios are established and managed that act as a check and balance on those kinds of different interests that normally arise as part of routine day-to-day business in any government system.[71]

2.56 Dr Bacon went on to point out that the proposed amendments would result in greater transparency in the approvals process, as well as an assurance framework and call-in power of the minister. In relation to the assurance framework, Dr Bacon stated:

> …there is an assurance framework that is set out through clear provisions in the draft approvals bilateral agreements that would provide additional checks and balances around how assessment and approval decisions would be made.[72]

2.57 Dr Bacon also commented on the provisions in the bilateral agreements around transparency which include the requirements and undertakings to make information publicly available for each key point of an assessment or an approval process that a state would be undertaking. Dr Bacon went on to state that this 'gives a strong degree of transparency about the processes that are being followed to ensure that they are being followed appropriately'.[73]

2.58 As noted above, there will also be a governance mechanism in both the NSW and Queensland agreements with the establishment of a senior officers committee for overseeing and implementation and smooth operation of the agreements.[74] Dr Bacon concluded:

> So our view is that all of those things together, in combination, will provide a very high degree of confidence that the Commonwealth will know the kinds of things that the states and territories are assessing and considering.[75]

Schedule 2—Flexibility in performing assessment of controlled actions

2.59 According to the department's submission, the amendments in Schedule 2 of the bill will allow the Commonwealth to complete the approval process where an

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71 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 41.

72 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 41.

73 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 41; see also Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 66.

74 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, pp 42, 49.

75 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 49.

approval bilateral agreement is suspended or cancelled or ceases to apply. Where the Commonwealth takes over the determination process, it will be empowered to use all or part of an assessment process carried out by a state of territory in its determination of a matter in the event. The department noted that this would reduce delays in processing and avoid duplication allowing for an effective transition from state processes to the processes provided for in the EPBC Act.[76]

Schedule 3 Part 1—Amendments relating to water resources

2.60 The *Environment Protection and Biodiversity Conservation Amendment Act 2013* extended the list of matters of national environmental significance to include a water trigger for mining or coal seam gas (CSG) projects impacting on a water resource.[77] This act also had the effect of prohibiting state or territory governments from being accredited to make the final decision on actions assessed under the water trigger.[78]

2.61 The amendments proposed in Schedule 3 Part 1 will not affect the water trigger itself—the water trigger will still be listed as a matter of national environmental significance.[79] However, the proposed amendments to the EPBC Act will empower the minister to accredit state and territory processes for the purpose of approvals relating to large coal mining and CSG developments that are likely to have a significant impact on a water resource.[80]

2.62 The Hon. Mr Greg Hunt MP, Minister for the Environment, in the second reading speech to the bill, stated:

> Providing a single approval process for the water trigger will reduce the dead-weight regulatory burden on business while ensuring that high environmental standards are fully, completely and absolutely maintained. Robust environmental assessments of these actions will continue to be required. It is fundamental. But they will be delivered through a single assessment and approval process by the states. This will provide more certainty for investors with a simpler, streamlined regulatory system which is good for Australia's international investment reputation…
>
> The community can then have confidence that the impacts on water resources from large coalmining and coal seam gas developments will continue to be subject to rigorous assessment and approval processes.[81]

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76 Department of Environment, *Submission 33*, p. 6.

77 Dr Chris McGrath, *Submission 1*, p. 165.

78 Dr Chris McGrath, *Submission 1*, p. 173.

79 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 2; Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40; Department of the Environment, *Submission 33*, pp 2, 5.

80 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 2; Department of the Environment, *Submission 33*, pp 2, 5.

81 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 2.

2.63 Dr Bacon also explained the intention of the proposed amendments and stated:

> This amendment will allow the Australian government to accredit state and territory processes for approving actions involving the water trigger where the process meets national standards. This is consistent with the approach to other matters of national environmental significance under the EPBC Act. The water trigger itself will not be repealed. The minister can only accredit state and territory processes for approving actions involving the water trigger if they meet national standards, such as the requirement to avoid unacceptable or unsustainable impacts on matters of national environmental significance.[82]

2.64 The amendments also propose to enable states, not currently party to the National Partnership Agreement on Coal Seam Case and large Coal Gas Mining development, to seek advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) in relation to actions that may affect the water trigger.[83] Ms Munro explained that the amendments will make it clear that states can to refer matters to the IESC. The bilateral agreements oblige the states to refer matters as well as to 'actually take into account that advice' and they will be bound to take advice into account in their determination.[84]

2.65 While opposing the changes allowing for a 'single approval decision', the Wildlife Preservation Society of Queensland—Sunshine Coast and Hinterland supported the amendment to allow all states and territories to request advice from the IESC, as the society saw this as enabling up-to-date environmental science to be available for assessment purposes.[85]

2.66 Other submitters argued that given the importance of water to Australia and the fact that water resources cross jurisdictional boundaries the water trigger should remain closely scrutinised by the Commonwealth Government.[86] It was argued that

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82 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

83 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, pp 2–3; Department of the Environment, *Submission 33*, p. 5.

84 Ms Kushla Munro, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

85 Wildlife Preservation Society of Queensland - Sunshine Coast & Hinterland Inc, *Submission 6*, pp 1–2.

86 See, for example, Lock the Gate Alliance, *Submission 24*, pp 5–6; National Farmers' Federation, *Submission 30, Supplementary submission*, p. 2; Humane Society International, *Submission 31*, pp 1–2; Australian Conservation Foundation, *Submission 46*, p. 5; Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 4; Queensland Murray-Darling Committee, *Submission 50*, p. 8; Public Health Association of Australia, *Submission 59*, p. 3.

state and territory governments are unable to effectively maintain high environmental standards, either due to insufficient capacity or conflict of interest.[87]

2.67 Lock the Gate Alliance, for example, stated that it was strongly supportive of the water trigger:

> …because we understand that water resources cross jurisdictional boundaries, and decisions about mining projects that have irreversible impacts on water require the perspective that only a Commonwealth trigger can provide.[88]

2.68 Ms Ruchira Talukdar, ACF, further commented:

> …the water trigger was put in place because of community concerns that states are not adequately able to deal with threats to water resources from these kinds of large coal and coal seam gas mining projects. To actually hand that back to the states just does not make any sense, given the reason it was put in place three years back was exactly because of concerns that states cannot handle these matters adequately.[89]

2.69 The Wilderness Society described the proposal as not only a broken promise but also a potential disaster.[90]

2.70 The Minerals Council of Australia put another view, stating that it considered that the water trigger is unnecessary because it effectively duplicates processes that are already in place at the state level. Ms Stutsel went on to comment:

> That duplication was further enhanced with the establishment of the independent expert scientific committee in the national partnership agreements, which added an additional layer of regulatory requirements on top of industry. And then, on top of that, we have also had the water trigger under the EPBC Act.
>
> Further, we consider that the water trigger is inconsistent with the original intent of the act in that it does not actually relate to a matter of environmental significance. Instead, it relates to the specific activities of a sector, namely large coal projects and CSG.[91]

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87 The Wilderness Society Inc, *Submission 56*, p. 4; Ms Ruchira Talukdar, Australian Conservation Foundation, *Committee Hansard*, 10 June 2014, pp 5, 9; Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, pp 6–7; Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 41

88 Lock the Gate Alliance, *Submission 24*, p. 5.

89 Ms Ruchira Talukdar, Australian Conservation Foundation, *Committee Hansard*, 10 June 2014, p. 5; see also Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 30.

90 The Wilderness Society, *Submission 56*, p. 4.

91 Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 59.

2.71 This view was supported by other industry groups including the Business Council of Australia and Australian Petroleum Production & Exploration Association Limited.[92]

Schedule 3 Part 2—Amendments relating to bilaterally accredited authorisation processes

2.72 As mentioned in Chapter 1, the purpose of this part of Schedule 3 is to allow for the accreditation of authorisation processes that meet appropriate EPBC Act standards. This would allow for the accreditation of all or part of an instrument made under a law, including formal policies, plans, procedures and guidelines.

2.73 Some submissions raised concerns about this amendment on the grounds that policies and processes are not subject to public or parliamentary oversight.[93] Further, policies and guidelines, by their very nature, do not have force of law, and therefore are more difficult to enforce.[94]

2.74 In response, Dr Bacon explained that in order for an authorised process to be accredited it must still be set out under state law-there must be a 'legislative hook'. Furthermore, the authorised process would also have to meet the relevant standards to be accredited and the assurance framework as outlined above would still apply to that accreditation process.[95]

2.75 The Property Council of Australia, who were in favour of this amendment, submitted:

> This [proposed amendment] 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…[assisting to] streamline the processes and remove duplication.[96]

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92 Minerals Council of Australia, *Submission 32, Attachment 1*, p. 7; Business Council of Australia, *Submission 45*, p. 3; Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 3.

93 Humane Society International, *Submission 31*, p. 2; Australian Conservation Foundation, *Submission 46*, p. 6; Australian Network for Environmental Defender's Offices Inc, *Submission 49*, pp 4–5. See also Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 8; Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 28; Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 36; Ms Ilona Millar, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, p. 55.

94 WWF-Australia, *Submission 34*, p. 2; Australian Conservation Foundation, *Submission 46*, p. 6; Environmental Justice Australia, *Submission 54*, pp 4–6. See also Mr Glen Klatovsky, Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 8; Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 28; Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 36.

95 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 48.

96 Property Council of Australia, *Submission 63*, p. 2.

Schedule 4—Minor amendments of bilateral agreements

2.76 As outlined in Chapter 1, the proposed amendments included in Schedule 4 of the bill allow for the minister to make minor amendments to an accredited management arrangement, authorisation process or assessment process without triggering the parliamentary and public consultation requirements set out in Part 5 of the EPBC Act or the requirements for a minor amendment under section 56A of the EPBC Act. However, before using this power, the minister must be satisfied that the change will not result in a material adverse impact to a protected matter and that the assessment or protection outcomes provided for under the original accreditation decision will not be substantially altered.[97]

2.77 This proposal was opposed by a number of submitters, including WWF-Australia and the Medical Association for Prevention of War, on grounds that it will result in amendments being made without public participation and parliamentary oversight.[98] ANEDO stated further that:

> This amendment, along with the amendments allowing guidelines and procedures to be accredited, could allow a State Minister to alter an accredited procedure or guidelines (which is unlikely to require Parliamentary approval) and have an approval granted under the revised guidelines authorised by the Commonwealth Minister retrospectively (also without the need for Parliamentary approval). The only restriction is the requirement that the amendment not have a 'material adverse impact'.[99]

2.78 The department explained the purpose of this Schedule in its submission:

> The amendments relating to minor changes to a state or territory process will provide for an efficient process so that a relevant bilateral agreement can continue to apply to an accredited state or territory management arrangement, authorisation process or manner of assessment, where there are minor amendments to that arrangement, process or manner of assessment. Without the amendments, these small changes would cause significant uncertainty for the operation of the agreements.[100]

Schedule 5—Miscellaneous amendments

2.79 The proposed repeal and substitution of subsection 46(1) of the EPBC Act and the amendments to subsection 46(3) of the EPBC Act and its paragraphs have the effect of allowing people or entities authorised by the state to make approval decisions under bilateral agreements, clarifying that bilateral agreements could apply to projects

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97 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, p. 22.

98 WWF-Australia, *Submission 34*, p. 3; Medical Association for Prevention of War, *Submission 43*, p. 6. Friends of the Earth Australia, *Submission 44*, p. 3; Australian Conservation Foundation, *Submission 46*, p. 6; Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 6.

99 Australian Network for Environmental Defender's Offices Inc, *Submission 49*, p. 6.

100 Department of the Environment, *Submission 33*, p. 6.

approved before accreditation of a state or territory process and empowering the minister, in making an accreditation decision, to take into account all matters considered relevant to the determination.[101]

2.80 Some submitters raised concerns about broadening the range of entities allowed to approve actions.[102] These concerns centred on the capacity of authorised persons to act in the national interest, the potential conflicts of interest and the consequential negative impacts to the maintenance of strong environmental standards.[103] The conflict of interest, need to maintain high environmental standards and capacity issues have all been covered above.

2.81 As reiterated by departmental representatives, the proposed amendment would shift the focus from the identity and legal status of the decision maker to whether that decision maker can adhere to high environmental standards. It is the high environmental standards which are emphasised.[104] Dr Bacon explained that the proposed amendment was also intended to clarify situations such as where a state or territory environmental court or tribunal makes a determination on a merit review and goes on to substitute its decision for that of the decision maker. Under the current legislation, if that court or tribunal did not meet the definition of an agency its substituted decision might not be accepted as an accredited decision.[105]

2.82 The proposed addition of a new section 48AA to the EPBC Act would allow the Commonwealth to take into account Commonwealth, state and territory policies when making approval decisions under a bilateral agreement. The department submitted that this proposed amendment would allow for bilateral agreements to be based on the most current policies and guidelines. This amendment is important to ensure that decisions made under bilateral agreements incorporate the latest science and best practice approaches to environmental management and will help facilitate continuous improvement.[106]

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101 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 27. See also the Department of the Environment, *Submission 33*, pp 7–8.

102 Dr Yung En Chee, *Submission 36,* p. 6; Medical Association for Prevention of War, *Submission 43*, p. 5; Australian Conservation Foundation, *Submission 46*, p. 6; Places You Love Alliance, *Submission 55*, p. 2; David Arthur, *Submission 60*, p. 5. See also Ms Ruchira Talukdar, Australian Conservation Foundation, *Committee Hansard*, 10 June 2014, p. 8.

103 Humane Society International, *Submission 31*, p. 3; Dr Yung En Chee, *Submission 36*, p. 6; Medical Association for Prevention of War, *Submission 43*, p. 5; Australian Conservation Foundation, *Submission 46*, p. 6; Places You Love Alliance, *Submission 55*, p. 2; David Arthur, *Submission 60*, p. 5; Mary River Catchment Coordination Association, *Submission 62*, p. 3. See also Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 17; Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 10 June 2014, p. 28; Mr Peter Cosier, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, p. 55.

104 Ms Kushla Munro, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

105 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 43.

106 Department of the Environment, *Submission 33*, p. 7.

Conclusion

2.83 The committee supports the Government's reforms to establish a one stop shop for environmental approvals. The committee considers that this will improve the efficiency of environmental regulation while maintaining the high standards set out in national environmental law.

2.84 The committee notes the concerns of some submitters but considers the assurance mechanisms to be put in place, and in particular the call in powers of the minister, will address these concerns. The committee considers that sufficient safeguards, as well as adequate checks and balances, are incorporated in the proposed amendments to the EPBC Act.

Recommendation 1

2.85 The committee recommends that the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 be passed.