The Senate

Environment and Communications Legislation Committee

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

Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 [Provisions]

June 2014

© Commonwealth of Australia 2014

ISBN 978-1-76010-021-6

Committee address
PO Box 6100
Parliament House
Canberra ACT 2600
Tel: 02 6277 3526
Fax: 02 6277 5818
Email: ec.sen@aph.gov.au
Internet:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.

The details of this licence are available on the Creative Commons website: http://creativecommons.org/licenses/by-nc-nd/3.0/au/.

This document was printed by the Senate Printing Unit, Parliament House, Canberra

Committee membership

Committee members

Senator John Williams, Chair	NATS, New South Wales
Senator Anne Urquhart, Deputy Chair	ALP, Tasmania
Senator David Fawcett	LP, South Australia
Senator Louise Pratt	ALP, Western Australia
Senator Anne Ruston	LP, South Australia
Senator Larissa Waters	AG, Queensland

Committee secretariat
Ms Christine McDonald, Committee Secretary
Mr Hari Gupta, Senior Research Officer
Mrs Dianne Warhurst, Administration Officer

Table of Contents

Chapter 1
Background

Introduction

1.1 On 15 May 2014, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 (the Bilateral Approvals Implementation Bill) and the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 (the Cost Recovery Bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 23 June 2014.[1]

1.2 The committee has been requested to review the bills and gather evidence on matters including the:

- potential impacts of delegating environmental approval powers to state and territory governments;
- maintenance of high environmental standards;
- benefits of streamlining and reducing red tape; and
- potential impacts of cost-recovery on environmental assessment and approval processes, including budgetary impact, cost impacts for proponents and impacts on process timing.[2]

Conduct of the inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 30 May 2014.

1.4 The committee received 68 submissions relating to the bill and these are listed at Appendix 1. The committee held a public hearing in Melbourne on 10 June 2014. The list of witnesses who appeared at the hearing may be found at Appendix 2.

1.5 The submissions and transcript of evidence may be accessed through the committee's website at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/EPBC_Bilats_and_cost_recovery_Bills.

1.6 The committee would like to thank all the organisations and individuals that contributed to the inquiry and the witnesses who attended the public hearing.

Note on references

1.7 Hansard references in this report are to the proof committee Hansard. Page numbers may vary between the proof and the official Hansard transcript.

---

1 *Journals of the Senate*, No. 29, 15 May 2014, p. 819.

2 Selection of Bills Committee, *Report No. 5 of 2014*, Appendix 3, 4, 5.

Purpose of the bills

1.8 In the second reading speech, the Hon. Mr Greg Hunt MP, Minister for the Environment, explained the purpose of the Bilateral Approvals Implementation Bill. He stated that the bill:

> …amends the EPBC Act to facilitate the efficient and enduring implementation of the Australian government's one-stop shop reform for environmental approvals.
>
> This bill makes amendments to clarify the existing provisions of the EPBC Act to help ensure the durable operation of the one-stop shop and provide certainty for business. None of the amendments change or reduce the standards that state and territory processes must meet in order to be accredited under bilateral agreements, and indeed in appropriate cases, states are actually lifting their standards either through procedural steps or legislative steps to be in accord with the highest of Commonwealth standards.[3]

1.9 The Explanatory Memorandum to the Cost Recovery Bill stated that the purpose of the bill is to:

> …allow for cost recovery for environmental impact assessments under the…EPBC Act...The Bill allows for Regulations to be made setting fees for activities under the EPBC Act, provide for fee exemptions, waivers and refunds. The Bill also allows for cost recovery for the assessment and approval of action management plans submitted after the Minister has granted an approval under the EPBC Act.[4]

Environment Protection and Biodiversity Conservation Act 1999

1.10 The EPBC Act is the Commonwealth's primary piece of environment legislation. 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

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

4 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, p. 3.

- to assist in the co-operative implementation of Australia's international environmental responsibilities.[5]

1.11 The EPBC Act promotes a partnership approach to environmental protection, allowing the Commonwealth to join with the states and territories to provide a national scheme of environment and heritage protection and biodiversity conservation.

The current system of assessment and approvals processes

1.12 At present, proposed actions that have, or are likely to have, a significant impact on a matter of national environmental significance must be referred to the Commonwealth Minister for the Environment (the minister) for approval. The minister will then decide whether assessment and approval is required under the EPBC Act.[6]

1.13 The nine matters of national environmental significance protected under the EPBC Act are:

- world heritage properties;
- national heritage places;
- wetlands of international importance (listed under the Ramsar Convention);
- listed threatened species and ecological communities;
- migratory species protected under international agreements;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park;
- nuclear actions (including uranium mines); and
- a water resource, in relation to coal seam gas development and large coal mining development (the water trigger). [7]

1.14 Other matters which are protected by the EPBC Act include:

- the environment, where actions proposed are on, or will affect Commonwealth land and the environment; and
- the environment, where Commonwealth agencies are proposing to take an action.[8]

1.15 When an activity is referred to the minister, the details of the proposal are considered to determine whether or not it will have a significant impact on a matter of

---

5 EPBC Act, ss. 3(1).

6 http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what (accessed on 04/06/2014).

7 http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what (accessed on 04/06/2014).

8 http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/what (accessed on 04/06/2014).

national environmental significance. All referrals are published to give the public an opportunity to provide comment. The minister or a departmental delegate (the decision maker) will then decide whether or not the activity will need to be further assessed. The decision (referral decision) will be that the activity is classified as:

- a controlled action where a significant impact on a nationally protected matter is likely to result from it, and therefore the activity needs to undergo further assessment;
- not a controlled action but to be carried out in a particular manner, where the activity does not need to be further assessed but must be carried out in the manner prescribed by the decision;
- not a controlled action where the activity does not need further assessment because it is not likely to have a significant impact on nationally protected matters; or
- a clearly unacceptable action where the activity cannot proceed because it is clear it will have an unacceptable impact on nationally protected matters.[9]

1.16 A method of assessment will be chosen for a controlled action depending on the scale and complexity of the activity. There are five different levels of assessment, depending on the significance of the project and how much information is already available. Each level involves consideration of technical information assembled by the proponent and comments made by the public.[10]

1.17 The EPBC Act sets out statutory timeframes for approval decisions for all environmental assessment processes.[11]

1.18 At present, activities may also need to be assessed under state and local government legislation.[12]

Bilateral agreements

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

1.20 The EPBC Act provides for 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 minister under the EPBC Act;[13] and

---

9 http://www.environment.gov.au/resource/national-environment-law-basics-environmental-impact-assessments-and-approvals-projects (accessed on 04/06/2014).

10 http://www.environment.gov.au/resource/epbc-act-frequently-asked-questions (accessed on 04/06/2014).

11 EPBC Act, s. 130.

12 http://www.environment.gov.au/resource/national-environment-law-basics-environmental-impact-assessments-and-approvals-projects (accessed on 04/06/2014).

- 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.[14]

1.21 The Commonwealth Government has entered into bilateral agreements with all state and territory governments to accredit environment assessment processes that meet the requisite standards.[15] However, to date, there has been limited use of approval bilateral agreements.[16]

1.22 To enter an approval bilateral, the EPBC Act requires a management arrangement or authorisation process to be accredited by the minister and laid before each House of Parliament, where it may be disallowed.[17] There are broad requirements for public consultation before a bilateral agreement may be entered into and before entering into an agreement the minister must be satisfied that Australia's relevant international obligations will be met.[18] The *National Standards for Accreditation of Environmental Approvals*[19] must be considered before an approval bilateral agreement may be entered into and after an agreement has been entered into the minister is empowered to unilaterally suspend or cancel the agreement if satisfied that it has not or will not be complied with.[20]

The Hawke Review and movement towards using bilateral approvals

1.23 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. Dr Allan Hawke headed the review (Hawke review).

---

13 EPBC Act, s. 47.

14 EPBC Act, s. 29, s. 46.

15 Copies of the current assessment bilateral agreements may be found on the website of the Federal Department of the Environment: http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements (accessed on 04/06/2014).

16 The one bilateral approval agreement that has been put in place relates to the Sydney Opera House, made in 2005: see *Management Plan for the Sydney Opera House for the purposes of a Bilateral Agreement between the Australian Government and the State of New South Wales under section 45 of the EPBC Act relating to actions approved and taken in accordance with the accredited Management Plan*, August 2005, http://www.environment.gov.au/system/files/pages/59ca36d1-4581-4d7d-83d7-04b124d801b1/files/soh-accreditation.pdf (accessed on 04/06/2014). This agreement was replaced by a conservation agreement for the Opera House as a world heritage site after the agreement expired in 2010.

17 EPBC Act, ss. 46(4).

18 EPBC Act, s. 45, s. 49, s. 50.

19 A copy of the standards may be found at http://www.environment.gov.au/minister/hunt/2014/pubs/mr20140328a.pdf (accessed on 04/06/2014).

20 EPBC Act, s. 57-64.

1.24 The Hawke review was undertaken in accordance with section 522A of the EPBC Act. The section 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 its commencement.

1.25 The final report of the review, *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (the Hawke report), was published in October 2009 and made 71 recommendations over a wide range of areas, all aimed at improving the operation the EPBC Act.[21]

1.26 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 approvals processes and recommended (recommendation four):

> …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;
>
> (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.[22]

---

21 *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*), http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf (accessed on 04/06/2014).

22 Hawke Report p. 28 http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf (accessed on 04/06/2014).

1.27 The Commonwealth Government agreed to this recommendation. 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.[23]

1.28 Recommendation six of the Hawke report dealt 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. Recommendation six also called 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 of National Environmental Significance (MNES), and for creation of a broad performance audit power to assess the performance of accredited systems. The Commonwealth Government accepted the substance of this recommendation, but not all elements of it.

1.29 On 24 August 2011, the then 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 Commonwealth Government's response to the Hawke review. He stated that the reforms would include:

- a more proactive approach to protecting Australia's environment through more strategic assessments and regional environmental plans.
- identifying and protecting ecosystems of national significance under the EPBC Act through regional environment plans, strategic assessments or conservation agreements to protect the most significant and healthy ecosystems before they are threatened or degraded.
- 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.[24]

1.30 In April 2012, the Council of Australian Governments (COAG) announced that it would reform the administration of national environment regulation in order to 'reduce duplication and double-handling while maintaining high environmental

---

23 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, http://www.environment.gov.au/system/files/resources/605a54df-7b33-4426-a5a8-51de24b29c71/files/epbc-review-govt-response.pdf (accessed on 04/06/2014).

24 The Hon. Tony Burke, *Media Release*, 'Reforms better for the environment, better for business', 24/08/2011, http://www.environment.gov.au/minister/archive/burke/2011/mr20110824.html (accessed on 04/06/2014).

standards'.[25] To do this, COAG agreed to prioritise the development of approval bilateral agreements under the EPBC Act.

1.31 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. The proposal recommended that:

> …all jurisdictions…work together to develop a structured approach to ensure environmental impact assessments for all eligible projects are assessed (where the proponent agrees) using bilateral agreements under the Environmental Protection and Biodiversity Conservation (EPBC) Act.[26]

1.32 The then Prime Minister, the Hon. Julia Gillard MP, in December 2012, asked the States to come back to the federal government with a unified national position about which environmental decision-making powers should be handed over and how they would legislate their pledge to meet high federal standards.[27] Nothing else was done by the federal government before the federal elections of September 2013.

Previous committee inquiries into the use of bilateral approvals

1.33 The former Senate Standing Committee on Environment, Communications and the Arts considered in detail issues related to the state and territories' role in relation to assessments and approvals under the EPBC Act in its 2009 inquiry*: The operation of the Environment Protection and Biodiversity Conservation Act 1999.*[28]

1.34 In its report the committee recommended:

> …that the Independent Review of the EPBC Act and/or the ANAO examine the effect of existing bilateral agreements on the quality of environmental assessments of matters of national environmental significance. The committee suggests that particular regard be given to the transparency of, public engagement in, and appeal rights in relation to assessments performed under a bilateral agreement, compared to the conditions that would have existed had the assessment been performed under the EPBC Act.[29]

---

25 COAG, *Statement of Environmental Assurance Outcomes*, July 2012, http://www.environment.gov.au/system/files/resources/0bfc6fde-8e57-4017-bea7-8a856bd7d2d5/files/environmental-assurance-outcomes.pdf (accessed on 29/05/2014).

26 Business Council of Australia, *Discussion Paper for the COAG Business Advisory Forum*, 10 April 2012, p. 5, http://www.bca.com.au/newsroom/discussion-paper-for-the-coag-business-advisory-forum (accessed on 04/06/2014).

27 Taylor L and Coorey P, 'Bid to Cut Green Tape Bogs Down in Detail', *Sydney Morning Herald*, 6 December 2012.

28 Senate Standing Committee on Environment Communication and the Arts, *The Operation of the Environment Protection and Biodiversity Conservation Act 1999*, First Report, March 2009 See in particular Chapter 4.

29 Senate Standing Committee on Environment Communication and the Arts, *The Operation of the Environment Protection and Biodiversity Conservation Act 1999*, First Report, March 2009, p. 49.

1.35 On 27 November 2012, a private Senator's bill was introduced by Senator Waters, the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012. The purpose of the bill was to prevent the Commonwealth from delegating its powers under the EPBC Act to enter into approval bilateral agreements by removing section 46 and making other consequential amendments. The bill did not propose to alter the assessment bilateral provisions of the EPBC Act.[30]

1.36 The bill was referred to the Senate Environmental and Communications Legislation Committee for consideration and the committee recommended that it not be passed.[31]

1.37 On 13 March 2013, the Environment Protection and Biodiversity Conservation Amendment Bill 2013 was introduced into the House of Representatives and its provisions were referred to the Environment and Communications Legislation Committee for inquiry and report. The bill, with amendments made by the House, aimed to amend the EPBC Act to provide for the establishment of a new matter of national environmental significance in relation to significant impacts of coal seam gas (CSG) development and large scale coal mining development on a water resource.[32]

1.38 The committee took the view that there was sufficient concern and evidence about the inadequacy of state approval process to warrant the involvement of the Commonwealth Government. Further, given concerns about conflict of interest arising from the fact that states would desire the investment and taxation provided by mining developments, the committee took the view that 'it seems reasonable the assessment of proposed CSG and coal mining developments should be undertaken by the Commonwealth Government'.[33] Therefore, the committee recommended unanimously that the bill, as amended, be passed by the Senate.[34]

Overview of the Bilateral Approvals Implementation Bill

1.39 The Bilateral Approvals Implementation Bill aims to implement the Government's one-stop shop reform for environmental approvals, specifically the

30 Senate Environment and Communications Legislation Committee, *Report on the inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, pp 1, 11–12.

31 Senate Environment and Communications Legislation Committee, *Report on the inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, p. 29.

32 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment Bill 2013, p. 2.

33 Senate Environment and Communications Legislation Committee, *Report on the inquiry into the Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]*, p. 21.

34 Senate Environment and Communications Legislation Committee, *Report on the inquiry into the Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]*, p. 31.

operation of bilateral agreements under Part 5 (Bilateral Agreements) of the EPBC Act. Full implementation of this reform will mean that state and territory governments will be able to make a single approval decision that accounts for both state matters and matters of national environmental significance.[35]

Schedule 1–Referral of controlled actions

1.40 Schedule 1 of the Bilateral Approvals Implementation Bill proposes to make amendments to Part 7 (Deciding whether approval of actions is needed) of the EPBC Act to confirm that where an action is or could be covered by an approval bilateral agreement it will be assessed by the relevant state or territory. It also proposes to clarify that, in these circumstances, proponents will not need or be able to refer the action to the Commonwealth.[36]

Schedule 2–Flexibility in performing assessment of controlled actions

1.41 Schedule 2 of the Bilateral Approvals Implementation Bill proposes to make amendments to various sections in Parts 7, 8 and 9 of the EPBC Act. The amendments aim to ensure that in the event an approval bilateral agreement is suspended or cancelled, or ceases to apply to a particular action, there is an efficient process to enable the Commonwealth to make an approval decision, allowing the Commonwealth to use all or part of an assessment process carried out by the relevant state or territory in its determination of the matter.[37]

1.42 In the second reading speech, the Hon. Mr Greg Hunt MP, Minister for the Environment, noted that these amendments are designed to improve the efficiency of the decision making process, allowing the Commonwealth to avoid duplication of state and territory processes. The amendments would give the minister the confidence that if he or she were to step in to deal with impropriety or failure by the states or territories to adhere to appropriate standards it would not necessarily create a level of undue delay to the ongoing processing of approvals.[38]

Schedule 3 Part 1–Amendments relating to water resources

1.43 Currently, the EPBC Act does not allow for the accreditation of state or territory processes for the approval of large coal mining and CSG developments that are likely to have a significant impact on a water resource. Schedule 3 Part 1 of the bill proposes to remove this restriction on processing by the state and territory governments through empowering the minister to accredit a state or territory process

35 Department of the Environment, *Submission 33*, p. 1.

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

37 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 11.

38 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 3.

to approve decisions on the water trigger. The schedule does not propose to remove the water trigger itself.[39]

1.44 In the second reading speech to the bill, the Hon. Mr Greg Hunt MP, Minister for the Environment, explained that in order to establish a one stop shop for environmental approvals it was important to allow the inclusion of the water trigger in approval bilateral agreements. The inclusion of the water trigger would create a consistent approach to all matters of national environmental significance, allowing the accreditation of those state and territory processes which meet the requisite high environmental standards.[40]

1.45 At present, unless the state or territory is party to a the *National Partnership Agreement on Coal Seam Gas and Large Scale Coal Mining Development 2012*, the minister is prohibited from giving that state or territory the right to request the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). This schedule proposes to remove this impediment. In his second reading speech, the Hon. Mr Greg Hunt MP, Minister for the Environment, stated that 'this will ensure that comprehensive environmental assessments can continue to include robust and independent science'.[41] Amendments to the Bilateral Approvals Implementation Bill made in the House of Representatives included a requirement that an approval bilateral agreement, which covers large coal mining and CSG developments that are likely to have a significant impact on a water resource, must include an undertaking by the state or territory to obtain and take into account the advice of the IESC. The IESC will also be empowered to provide advice to the minister about the operation of a bilateral agreement in relation to the water trigger.[42]

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

1.46 Under the current provisions of the EPBC Act, the minister may only accredit an authorisation process if it is set out in a law of the relevant state or territory. Part 2 of Schedule 3 of the Bilateral Approvals Implementation Bill proposes to amend various sections of the EPBC Act to allow for the bilateral accreditation of state or territory authorisation processes that meet the appropriate EPBC Act standards. The amendments would allow the minister to accredit authorisation processes that are set out in, for example, procedures or guidelines which are made or issued under state or territory law, but which are not set out in a state or territory legislation itself, provided

39 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 18.

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

41 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, p. 2; The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, pp 2–3.

42 Revised Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, p. 18.

they meet appropriate Commonwealth standards for assessing and approving actions.[43]

Schedule 4–Minor amendments of bilateral agreements

1.47 The EPBC Act does not currently include a process for dealing with minor changes to management arrangements or authorisation processes accredited under approvals bilateral agreements, or to assessment processes under assessment bilateral agreements. [44]

1.48 Schedule 4 of the Bilateral Approvals Implementation Bill does not propose to change the existing section 56A that defines the process for amending a bilateral agreement. Rather, the schedule proposes to provide the minister with the power to allow a state or territory to make minor amendments to an accredited management arrangement, authorisation process or assessment process without it affecting the relevant bilateral agreement. As the Explanatory Memorandum to the bill states, 'these arrangements will therefore facilitate the continuous improvement of an accredited arrangement, process or manner of assessment and allow those processes to respond to changes in circumstances'.[45]

1.49 The schedule clearly defines when a variation would be able to be made outside the parliamentary and public consultation requirements of Part 5 of the EPBC Act, or the requirements for a minor amendment under section 56A of the EPBC Act. The criteria being that the minister would have to be satisfied that the change would not reduce the assessment or protection outcomes provided for under the original accreditation decision.[46]

Schedule 5–Miscellaneous amendments

1.50 As stated in the Explanatory Memorandum, Schedule 5 of the Bilateral Approvals Implementation Bill proposes to make a series of minor, technical amendments to Part 5 (Bilateral agreements) of the EPBC. The amendments are aimed at clarifying and improving the operation of the part through:

- allowing approval bilateral agreements to include approvals made by any person or organisation authorised by the state or territory (such as local governments), rather than only entities that meet the EPBC Act definition of 'the state' or an 'agency of the state';
- clarifying that approval bilateral agreements could apply to projects that had been approved before the minister accredits the state or territory process (as

43 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 19, 20.

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

45 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 22, 23.

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

long as the action was approved in accordance with the relevant accredited process);

- clarifying that the minister can take into account all matters that the minister considers relevant when deciding whether to accredit a management arrangement or authorisation process; and
- ensuring that bilateral agreements can make reference to the most current version of instruments and policy documents.[47]

Overview of the Cost Recovery Bill

1.51 Cost recovery involves charging a fee to cover the cost of specific services provided by the Government for the benefit of a particular group or individual.[48] The EPBC Act already includes cost recovery for some permitting activities.[49]

1.52 The Cost Recovery Bill will allow for cost recovery for environmental impact assessments, including strategic assessments, under the EPBC Act. This will also make the EPBC Act consistent with the *Australian Government Cost Recovery Guidelines*, which establish that those who create the need for regulation should incur the costs rather than the costs being borne by the wider community.[50]

1.53 The Financial Impact Statement indicated that the estimated revenue from cost recovery under the EPBC Act is $7,776,907 in the 2014–15 financial year.[51]

1.54 The Cost Recovery Bill proposes to amend the existing provisions and add new provisions to the EPBC Act to set out the formal process for developing, submitting and varying action management plans. The proposed changes to the EPBC Act will also allow for cost recovery for activities associated with the approval of these plans.[52] The Explanatory Memorandum noted that the preparation and approval of an action management plan is a common requirement in the conditions of approval under the EPBC Act, allowing for ongoing oversight of an action and providing a level of flexibility to specify required environmental outcomes or

---

47 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, pp 2, 27.

48 Department of the Environment, *Cost Recovery under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* 'Environmental Assessments Frequently Asked Questions', 2014, http://www.environment.gov.au/system/files/pages/07339a5b-6ca9-4923-899d-d9fb4a772a59/files/cost-recovery-faq_0.pdf (accessed on 04/06/2014).

49 See, for example, EPBC Act, s. 454.

50 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, p. 2. See also Department of Finance and Administration, *Financial Management Guidance No 4*: *Australian Government Cost Recovery Guidelines*, July 2005, p. 11, http://www.finance.gov.au/publications/finance-circulars/2005/docs/Cost_Recovery_Guidelines.pdf (accessed on 04/06/2014).

51 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, p. 2.

52 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, p. 2.

management strategies as new data becomes available or new technologies are developed.[53]

Schedule 1–Cost Recovery

1.55 Schedule 1 of the Cost Recovery Bill amends the EPBC Act proposing:

- to ensure that an assessment cannot continue if relevant fees have not been paid and that certain documents will not be taken to be 'given' to the minister if fees remain unpaid (Items 2–4);
- to provide a process for a person, prior to approval being granted, to elect to submit an action management plan to be approved after the minister has approved the taking of an action (Items 1 and 5);
- to clarify that a condition requiring the submission and implementation of an action management plan may only be attached to an approval where an election has been made or where the proponent agrees to the condition being attached (Items 6, 7 and 10);
- to allow the minister to request further specific information relating to an action management plan and/or invite public comment on the plan (Items 8 and 9);
- to provide a process to vary an action management plan (Item 11);
- to require that the notification of change of person proposing to take an action is provided to the minister (Item 12);
- to enable the minister to determine and then reconsider fees that may be charged for assessment by inquiry under Division 7 of Part 8 or assessment by strategic assessment under Division 1 of Part 10 (Items 13 and 14);
- to allow for the prescription, by regulations, of fees, refunds, exemptions and waivers to be paid to the Commonwealth (Item 16); and
- to ensure that time periods in the EPBC Act do not run if fees remain unpaid (Item 18).[54]

1.56 The waiver mechanism that will be included in the regulations will be available to public institutions, such as local governments carrying out activities such as prescribed burns in areas where an environmental assessment must be made. The regulations will also specify a method for calculating fees.[55]

---

53 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, p. 2.

54 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014, pp [5–13] (Note: the page numbering in the Explanatory Memorandum appears to be incorrect as page numbers 1-4 have be duplicated. Where brackets are used around page numbers, this refers to the physical page not the number used in the Explanatory Memorandum).

55 The Hon. Greg Hunt, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

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;

---

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.
>
> 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.
>
> 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

---

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

---

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:
>
> - $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:

---

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

---

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

---

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]

---

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.
>
> 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

---

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]

---

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

---

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]

---

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

---

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]

---

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]

---

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

---

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]

---

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.

Chapter 3

Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

3.1 Only a small number of submissions commented on the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 (the Cost Recovery Bill). Submitters provided comments in relation to the cost recovery mechanism and proposals in relation to action management plans.

Cost recovery proposal

3.2 The Department of the Environment (the department) commented that the cost recovery mechanism will provide the Government with a sustainable source of funds to perform its regulatory role under the EPBC Act and to provide an incentive to proponents to better assist in the environmental impact assessment process.[1] The Minister for the Environment, the Hon Greg Hunt MP, in the second reading speech, stated:

> Environmental assessment activities are appropriate for cost recovery because the activities deliver a clear benefit for a particular beneficiary by enabling them to undertake an activity approved under the EPBC Act.[2]

3.3 He went on to explain:

> Cost recovery will also improve the department's ability to meet statutory time frames by providing a sustainable source of resources to improve the efficiency of the assessment process. It will also provide incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning, as this may reduce the level of assessment required and therefore any costs payable.[3]

3.4 Places You Love Alliance supported the proposed cost recovery mechanisms. They claimed it will ensure that the department is adequately resourced to ensure operation of the Act and monitor performance.[4] Friends of Grassland added that cost recovery may also encourage environmentally sound development, in that a proponent

---

1 Department of the Environment, Cost Recovery under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) 'Environmental Assessments Frequently Asked Questions', 2014, http://www.environment.gov.au/system/files/pages/07339a5b-6ca9-4923-899d-d9fb4a772a59/files/cost-recovery-faq_0.pdf (accessed on 04/06/2014); Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

2 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

3 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

4 Places You Love Alliance, *Submission 55*, p. 5.

would be unlikely to pay an upfront fee unless the proposed action is likely to be approved.[5]

Issues raised in relation to cost recovery

3.5 Many industry groups were opposed to the cost recovery proposals. For example, the Business Council of Australia put the view that cost recovery should only be undertaken where there is a clearly identifiable beneficiary, that is, the benefits of the activity are largely private. The council concluded that 'where the benefits of the activity undertaken are public then it is not appropriate to apply cost recovery to a private proponent'.[6]

3.6 This view was supported by other submitters.[7] Ms Melanie Stutsel, Minerals Council of Australia, stated:

> …we do not support cost recovery in principle to fund the Australian government in carrying out its legislative responsibilities. We instead consider that the implementation of the EPBC Act should be properly resourced from the government's existing revenue base.[8]

3.7 It was also argued that developers already contribute through compliance costs for development assessment and through the substantial tax revenues that derive from development.[9]

3.8 Some opponents to the cost recovery proposal argued that the implementation of cost recovery for matters decided under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) would increase the financial burden on proponents.[10] Further, as noted by the Association of Mining Exploration Companies (AMEC), different industries would have varying capacities to pass on the costs to the end user.[11]

3.9 The National Farmers' Federation (NFF) argued that: there is little transparency in how the cost base that is to be recovered will be determined; there is no review mechanism, no benchmarking of the costs recovered to determine whether these are efficient, prudent and relevant; and there is a lack of independent regulatory

---

5 Friends of Grassland, *Submission 41*, p. 2.

6 Business Council of Australia, *Submission 45*, p. 4.

7 Ports Australia, *Submission 3*, p. 5; AMEC, *Submission 8*, p. 2; Minerals Council of Australia, *Submission 32*, p. 8; Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4; Property Council of Australia, *Submission 63*, p. 3. See also, Mr Graham Short, AMEC, Committee Hansard, 10 June 2014, p. 19.

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

9 Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4; Property Council of Australia, *Submission 63*, p. 3; Urban Development Institute of Australia, *Submission 65*, p. 2.

10 Ports Australia, *Submission 3*, p. 5; AMEC, *Submission 8*, p. 3; Australia International Council on Monuments and Sites, *Submission 58*, p. 2.

11 AMEC, *Submission 8*, p. 3.

oversight.[12] In addition, the NFF noted that the Government proposes to provide a small business exemption. However, the exemption is based on turnover as opposed to profit. The NFF argued that this is 'particularly problematic for the agricultural sector' and recommended that the Australian Taxation Office definition of primary producer be adopted and included as an additional exemption.[13]

3.10 As a consequence of these concerns, industry groups have argued that, if cost recovery is implemented:

- there should be a direct correlation between the cost of providing the service and the fees levied, with no cross-subsidisation;
- the process for determining fees should be open and transparent;
- the service should be provided in the most cost efficient and effective manner;
- there should be a review mechanism and/or an independent regulator overseeing the setting of fees; and
- clear timeframes should be established to increase certainty in the processes.[14]

3.11 The department responded to these concerns noting that the introduction of cost recovery for environmental assessments under the EPBC Act will mean that each person proposing to take an action that will have or is likely to have a significant impact on a matter of national environmental significance will pay for the services required to assess their application. This results in a more equitable sharing of the costs associated with protecting the environment between the general public and those who will derive a private benefit from environmental assessments.[15]

3.12 In relation to concerns about increased burdens on proponents, the department stated that where proponents provide good quality data and upfront information, the assessment process will be more efficient and consequentially the proponent will be made subject to lower fees.[16] Dr Rachel Bacon, Department of the Environment, added:

> Cost recovery will also provide incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning in order to reduce costs...The implementation of cost recovery under the EPBC Act will provide a sustainable source of

12 National Farmers' Federation, *Submission 30*, p. 2. See also Ports Australia, *Submission 3, p.* 6; Urban Development Institute of Australia, *Submission 65*, p. 3.

13 National Farmers' Federation, *Submission 30*, pp 1–6.

14 Ports Australia, *Submission 3*, p. 7; AMEC, *Submission 8*, p. 3; Minerals Council of Australia, *Submission 32*, p. 8; Business Council of Australia, *Submission 45*, pp 4-5; Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4.

15 Department of the Environment, *Submission 33*, p. 8.

16 Department of the Environment, *Submission 33*, p. 3.

> resources to improve the efficiency of the assessment process where the Commonwealth continues to undertake environmental assessments.[17]

3.13 Dr Bacon highlighted that cost recovery under the bill will only apply to Commonwealth processes—it will not apply to activities undertaken by states and territories under a one-stop shop system. Cost recovery of state or territory environmental assessment activities will remain a matter for those individual governments.[18]

3.14 The department noted that it had consulted widely with a range of affected groups on proposed cost recovery arrangements. The consultation process included publication of a consultation paper in September 2011, which resulted in changes to the proposed arrangements. Following the release of a draft Cost Recovery Implementation Statement in May 2012, the department sought comments from a wide range of stakeholders and hosted a consultation workshop.[19]

3.15 The Hon. Mr Greg Hunt MP, Minister for the Environment, in his second reading speech, noted that the bill allows for regulation to set fees and the methods of calculation of a fee. He went on to state that the department would release a cost recovery impact statement which details the fees payable and the methods for calculating fees and concluded 'we will, of course, consult with industry and the community in the process of so doing'. The bill also provides a process for proponents to apply for a reconsideration of the way in which a method may be used to calculate fees.[20]

3.16 The ministers concluded:

> The introduction of cost recovery complements the government's commitment to streamlining environmental approvals under the one-stop shop process by ensuring Commonwealth assessment activities are as efficient and effective as possible.[21]

Issues related to action management plan proposals

3.17 The Cost Recovery Bill aims to set out the formal process for developing, submitting and varying action management plans under the EPBC Act thus allowing for cost recovery for activities associated with approving these plans. The proposed addition of section 134A would allow the minister to seek public comment on a proposed action management plan, but does not make it mandatory.

---

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

18 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40. See also Department of the Environment, *Submission 33*, p. 8.

19 Department of the Environment, *Submission 33*, p. 9.

20 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

21 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 5.

3.18 Lock the Gate Alliance commented in relation to these amendments. While supporting moves to provide the opportunity for public comment on the making of management plans for managing the impacts of projects on matters of national environmental significant, the Alliance argued that this should be a requirement for all management plans, not a discretionary measure for the Minister to determine. In addition, while supporting the 'basic idea' of the requirement for ministerial approval of changes to management plan, the Alliance submitted that there was a need for public scrutiny of these decisions.[22]

3.19 Finally, the Hon. Mr Greg Hunt MP, Minister for the Environment, explained that the changes to provisions relating to action management plans were designed to bring those plans into the cost recovery regime and give the minister the flexibility to specify required environmental outcomes or management strategies as more data becomes available or new technologies are developed.[23]

Conclusion

3.20 The committee is of the view that as proponents gain the benefit of an activity approved under the EPBC Act, it is appropriate that they should contribute to the costs of approval. The committee notes that the department has undertaken extensive consultation in relation to these reforms and that amendments were made to the proposal before the bill was introduced into the Parliament.

3.21 In addition, the committee notes that the Hon. Mr Greg Hunt MP, Minister for the Environment, indicated in his second reading speech that the waiver capacity will be available in relation to public institutions such as local government.

3.22 In combination with the one stop shop proposal, the committee also considers that the cost recovery proposals will result in more efficient and sustainable environmental approvals processes.

Recommendation 2

3.23 The committee recommends that the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 be passed.

Senator John Williams
Chair

22 Lock the Gate Alliance, *Submission 24*, p. 2.

23 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

Australian Labor Party Senators' Dissenting Report

1.1 In 2011, the then Labor Government released its response to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (commonly referred to as the 'Hawke Review'). In its response, the Labor Government committed to achieving better environmental outcomes, while improving the efficiency of the management of matters of national environmental significance. This included a shift from individual approvals to strategic processes; and developing more efficient assessment and approval processes.[1]

1.2 Following this response, COAG agreed in April 2012 to prioritise approval bilateral agreements under the EPBC Act. Discussions about approval bilateral arrangements were held with the states and territories and a draft framework of standards for the accreditation of environmental approvals was released in November 2012.

1.3 While discussions with all jurisdictions were constructive, the Labor Government concluded that the significant challenges that emerged meant that providing both certainty and consistency for business and maintaining high environmental standards could not be achieved through an approval bilaterals process and did not progress this agenda. Instead a focus was put on meeting common information requirements, eliminating duplication and avoiding delayed approval processes.

1.4 The current Government often refers to the approval bilaterals process begun under the previous Labor Government as part of an argument for Labor's hypocrisy. This is clearly a misleading argument as Labor explored the option of pursuing approval bilaterals with the states and found that they would not lead to better environmental or business outcomes. This remains the position of Federal Labor.

1.5 Federal Labor Shadow Minister Mark Butler summarised Labor's opposition to these changes in his second reading speech on the Bill:

> At the end of the day we take as a matter of principle the view that matters of national environmental significance—which is the scope of matters covered by this legislation—must remain the province of a national government. That is not a party political perspective. Whether it is a national coalition or national Labor government and whether it is state

---

1 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), http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf (accessed on 20/06/2014); Australian Government, Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, August 2011, http://www.environment.gov.au/system/files/resources/605a54df-7b33-4426-a5a8-51de24b29c71/files/epbc-review-govt-response.pdf (accessed on 20/06/2014)

> Labor or state Liberal governments, our view is the same: the Commonwealth should have responsibility for matters of national environmental significance, for a whole range of reasons that I have tried to outline.[2]

1.6 For a full view of Federal Labor's views on this matter this dissenting report should be read in conjunction with the March 2013 Environment and Communications Legislation Committee Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012.

1.7 The Chair's report includes a comprehensive summary of many of the arguments against the Bill.

1.8 Public comment in support of the Bill in the Chair's report was largely focussed on the perceived reduction in cost for industry.

1.9 In evidence to the hearing, the Department could not outline what had changed since the 2012 decision by the previous Labor Government to stop the process apart from an election commitment by the Abbott Coalition Government.[3]

Schedule 1 - Referral of Controlled Actions

1.10 As highlighted in the Chair's Report, nearly all of the submissions received opposed the one stop shop reforms for some or all of the following reasons:

- 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;
- 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.

1.11 The Chair's Report highlighted that submissions from industry groups and the Premier of Queensland supported the amendments on the basis of reducing duplication in assessment processes to reduce monetary and time costs to industry.

1.12 Evidence from Dr Chris McGrath noted that the decisions made under the EPBC Act are highly discretionary and 'whether a decision complies with Australia's obligations under the World Heritage Convention or not is a matter that reasonable minds can differ on'. Dr McGrath concluded that 'the standards that are imposed in the approval bilateral are not worth the paper they are written on, because all of these decisions, at the end of the day, are a matter of discretion with broad parameters.'

---

2 The Hon. Mr Mark Butler MP, Shadow Minister for the Environment, Climate Change and Water, *House of Representatives Hansard*, 16 June 2014.

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

Complexity

1.13 The Chair's report uses an extract from the Department's submission that highlights the lack of consistency between the Commonwealth and states and territories can lead to differences in processes, outcomes and timeframes to argue in support of the changes. However, the Bill will clearly not result in one uniform environmental approvals process for all states and territories. There will continue to be a lack of consistency between the Commonwealth and states and territories in assessing matters of national environmental significance because the Bill allows states and territories to keep their own processes, as long as they meet national standards.

1.14 Mr Glen Klatovsky from The Places You Love Alliance highlighted in evidence at the hearing concerns of many submissions and witnesses around the complexity of the reforms and inability of states to meet national standards:

> They are taking what is currently, in my view, a one-stop shop—a set of nationally significant items that the Australian public have voted repeatedly in support of under the EPBC Act and which the federal government have had approval powers over through one system, the federal system—and are proposing to put it through eight separate systems. The original concept of allowing states to do assessment and approvals was based upon a belief that the states and territories would get up to the standards of the EPBC Act, which they have failed to do 15 years down the line.[4]

1.15 Rather than seeking to harmonise approvals processes for matters of national environmental significance, the Bill will entrench the differences between states and territories. Companies that operate across jurisdictions will be required to have understanding of each individual jurisdiction's processes for matters of national environmental significance, rather than just an understanding of the Commonwealth's processes.

1.16 The Chair's report notes that the Department of the Environment, the Minerals Council of Australia and AMEC believe that the Bill will eventually see the removal of duplication.

1.17 However, as highlighted by the first drafts of the bilateral agreements with New South Wales and Queensland there is no guarantee that states and territories will have approvals processes strong enough to ever see the complete removal of duplication.

1.18 Further, as Schedule 5 of the Bill allows for people or entities, such as local government, to be authorised by the state to make approval decisions, industry could be faced with many hundreds of decision makers each with their own processes. Therefore, Labor Senator's agree with a large number of submissions that the Bill is likely to increase complexity in the foreseeable future.

4 Mr Glen Klatovsky, The Places You Love Alliance, Committee Hansard, 10 June 2014, p. 5.

Efficiency Gains and Cost Reduction

1.19 The Chair's report highlights that many submissions believe that there will not be efficiency gains and cost reductions from the Bill. The Chair's report specifies that the largest regulatory costs for proponents are typically in the assessment phase, which is already completed in conjunction with states and territories, only typically requires an extra form to be completed and is normally completed within a few weeks. The Chair's report notes that AMEC and Minerals Council claim that this form takes a lot of extra time.

1.20 The Chair's report notes a cost benefit analysis conducted by Deloitte Access Economics, from the Minerals Council submission, concluded there would be over $1 billion in net benefits to business and government over a ten year period if bilateral agreements 'along with administrative reforms' were implemented. Examination of the cost benefit analysis uncovers that the net benefits from just the bilateral agreements is around one third of the total claimed in the Minerals Council submission.[5]

1.21 Labor Senators note that the cost benefit analysis undertaken by Deloitte Access Economics focussed solely on net benefits to government, industry and the economy from bilateral agreements and administrative reforms and assumed that environmental outcomes would remain constant.

1.22 The Chair's report notes evidence from Mr Glen Klatovsky of The Places You Love Alliance that good environmental protection laws deliver substantially higher public financial benefits, many multiples higher than compliance costs. Mr Klatovsky referred to the United States and the European Union. A speech by Professor Rod Fowler to the Forum for Nature expands on these points:

> - a study by the US EPA found that the benefits of the 1990 Clean Air Act Amendments will exceed compliance costs by a factor of more than thirty to one by 2020;
>
> the European Commission has reported that full implementation of EU environmental legislation will bring an annual benefit of 50 billion euros in terms of growth, jobs and well- being across the European continent.[6]

1.23 The Chair's report notes evidence from the Department that there is different analysis conducted by the Department of Environment to that conducted by states and territories. In this evidence, it appears that the Department generalises away the importance of its own specialised analysis regarding matters of national environmental significance.

> (the Department of Environment)…looks at often much of the same types of material or the same types of environmental assessment material and

5 Department of Sustainability, Environment, Water, Population and Communities, Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the Environment Protection and Biodiversity Conservation Act 1999, p 2, April 2011, http://ris.finance.gov.au/files/2011/09/EPBC-Act-Environmental-Impact-Assessment-CBA.pdf (accessed on 20/06/2014)

6 Professor Rob Fowler, Private Capacity, Forum 4 Nature Speech, Adelaide 26 May 2014, p. 8.

> 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. (*emphasis added*)

1.24 It is true that under the current model proponents are dealing with two regulators as part of the same project approval process. However, these two regulators are analysing the application on very different scales. As the Department outlines, the Commonwealth Department must have regard to matters of national environmental significance, while the states and territories have regard to whole-of-environment impacts within the jurisdiction's borders.

1.25 The Chair's report uses evidence from the Department related to the benefits of the recent accreditation of the NOPSEMA process. NOPSEMA is the sole national regulator for offshore petroleum, not eight very different state and territory jurisdictions. Labor Senators believe that the NOPSEMA example does not justify the devolution of approvals as it is related to a single national authority, not a national standard applied across eight states and territories.

1.26 The Chair's report also uses evidence from the Department of potential savings for a project proponent but does not consider any increased costs to the Commonwealth and / or states and territories. As states and territories have no experience in approvals relating to the nine matters of national environmental significance, they will need specialists capable of regulating proposals to the national standard. Further, as the Commonwealth will retain call in powers on all delegated approval it will need to retain staff to complete an approval in the case of a call in. As the purpose of these reforms are to make the approvals process more efficient while keeping environmental outcomes constant, Labor Senators are concerned that the Commonwealth will either have to keep a large number of staff with excess capacity to deal with call ins or see a large delay in project approvals.

1.27 Further, Labor Senators are concerned about the capacity of smaller states to approve projects relating to matters of national environmental significance at a national standard. A state regulator may only practice regulation with regard to specific matters of national environmental significance on a small number of occasions. This raises the potential for mistakes and costs to proponents from appeals and damage to the environment.

1.28 The Chair's report mentions the evidence from Environmental Justice Australia that the Bill will create further uncertainty in the approvals process. Further, Glen Klatovsky of The Places You Love Alliance provided evidence to the hearing that he felt that the Business Council of Australia appear to be less certain about the concept than they were in 2012 because of the potential exposure to litigation from poor processes of states and territories.

> It is interesting to read the Business Council of Australia's submission to this inquiry. They really emphasise the need for Commonwealth officers to

> be in each of the states and territories to actually make sure that this can work. This is at a time of massive job shedding, at both federal and state levels.[7]

1.29 The Business Council of Australia's submission noted a need for close administrative cooperation between the Commonwealth and states to ensure consistency in decisions. As Mr Klatovsky summarised in his evidence, The Business Council of Australia proposed an expansion of the Commonwealth public service to oversee state agencies as 'critical' to support the transition and 'remove duplication while maintaining environmental outcomes'.[8]

1.30 The Business Council did not propose a time frame for the cessation of the extra Commonwealth staffing or if some Commonwealth staff would assist more than one jurisdiction. Labor Senators are surprised by this submission, given the vast recommendations to slash the Commonwealth public service in the Business Council of Australia's Commission of Audit.

1.31 Labor Senators would have liked to question the Business Council of Australia on this proposal but the Council refused the Committee's invitation to appear at the hearing. This is despite the hearing being held in Melbourne, the location of the head offices of the Business Council of Australia.

Maintenance of National Environmental Standards

1.32 The Chair's report summarises arguments proposed in many of the submissions that bilateral approvals agreements will see a 'potential diminution' in national environmental standards, because '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'.

1.33 The Chair's report highlights that a number of submissions argued that there was therefore a need to keep national protection measures on matters of national environmental significance.

1.34 In addition to the evidence included in the Chair's report, Labor Senators wish to highlight further evidence of a number of witnesses on the negative impact of bilateral approval agreements on matters of national environmental significance and on Australia's international obligations and the need for national leadership on the environment.

---

7 Mr Glen Klatovsky, The Places You Love Alliance, *Committee Hansard*, 10 June 2014, p. 3.

8 Business Council of Australia, *Submission 45*, p. 3.

1.35 Mr Peter Cosier from the Wentworth Group of Concerned Scientists noted in evidence to the hearing the large focus of referrals to the Commonwealth on threatened and migratory species:

> Seventy-five per cent of proposals that need to come to the Commonwealth under the EPBC Act are to do with the threatened species or migratory species triggers, which is effectively a land-clearing trigger.[9]

1.36 Mr Brendan Sydes from Environmental Justice Australia summarised the need for a national approach to management of nuclear materials:

> Nuclear, of all things, is not something where you want the eight or nine different rail gauges type phenomenon; that is something where there ought to be consistent, strong Commonwealth leadership.[10]

1.37 Mrs Alexia Wellbelove from the Humane Society International highlighted concerns regarding a potential race to the bottom between states without regard to a national perspective:

> Our concern is that this bill is seeking to bend federal law to meet these lower state standards. Clearly the need for this bill has been driven by the fact that these laws are not up to the job, and we are concerned that there is the potential for a race to the bottom. It also leads us to the conclusion that our most important, nationally protected places and wildlife will have decisions made on them at the state or even worse the local level and not with the necessary national perspective. HSI's position remains firmly that national environmental issues need national leadership.[11]

1.38 Ms Ruchira Talukdar from the Australian Conservation Foundation summarised the concerns of many submissions in evidence at the hearing regarding an inability of states and territories to meet Australia's international obligations:

> When it comes to international obligations, like Ramsar or World Heritage, the Australian public do not have confidence that state governments can protect those kinds of areas adequately. One reason for this is: it is not for one state alone to decide whether a matter that is of national or international significance should be protected, which is why the EPBC Act was put into place in the first case after the Tasmanian dam case.[12]

1.39 Ms Rachel Walmsley from the Australian Network of Environmental Defender's Offices expanded on the concerns regarding Australia’s international obligations in evidence at the hearing:

---

9 Mr Peter Cosier, Wentworth Group of Concerned Scientists, *Committee Hansard,* 10 June 2014, p. p. 53.

10 Mr Brendan Sydes, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 14.

11 Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 32.

12 Ms Ruchira Talukdar, Australian Conservation Foundation, *Committee Hansard,* 10 June 2014, p. 2.

> If you look at state and territory laws, they rarely mention things like the convention on migratory species. They rarely refer even to the Ramsar Convention. These are all things that are right through the EPBC Act. State legislative definitions of migratory species do not refer to the conventions and there is no requirement for states to comply with international obligations. Once we get down to state level, there is just not the same level of detail as there is in the EPBC Act.[13]

1.40 Mrs Alexia Wellbelove from Humane Society International also expanded on the concerns regarding Australia's international obligations in evidence at the hearing:

> By handing over decision-making on migratory species, World Heritage, wetlands of international importance or Ramsar to the states, we fail to understand how Australia can effectively implement the conventions that those matters have arisen from. For example, migratory species is listed as 'migratory species' under the EPBC Act because it has been listed on the appendices of the CMS convention, as it is known. Australia has to prepare a national report to that convention and, if those matters are delegated to a state, territory or local government, we do not understand how Australia can effectively meet its commitments.[14]

1.41 Labor Senators note that the Department's evidence was focussed around a range of oversight measures including the process for the approval of the bilateral agreement, five year reviews, unscheduled audits, a senior officers committee and a call-in power for the Commonwealth.

1.42 Labor Senators note that the Abbott Coalition Government has announced a staff reduction at the Department of the Environment of 480 positions over three years. Labor Senators also note that a number of Department of Environment staff will be seconded to state governments to assist with the implementation of bilateral approvals agreements. Labor Senators are concerned that the Department of Environment will have insufficient resources for comprehensive unscheduled audits of state government processes let alone to complete a full approval in the case of a call-in.[15]

1.43 Further, Labor Senators are concerned that the Minister responsible for approving a bilateral approvals agreement and for oversight of state government processes has in just nine months broken three key election commitments on funding for the Emissions Reduction Fund, Landcare and the One Million Solar Roofs

---

13 Ms Rachel Walmsley, Australian Network of Environmental Defender's Offices *Committee Hansard,* 10 June 2014, p. 27.

14 Mrs Alexia Wellbelove, Humane Society International, *Committee Hansard*, 10 June 2014, p. 36.

15 ABC News, Federal Environment Department to shed 480 more public servants in latest round of job cuts, 7 April 2014, http://www.abc.net.au/news/2014-04-07/federal-environment-department-to-shed-more-jobs/5372702 (accessed on 20/06/2014)

program and allowed spoil from dredging to be dumped within the Great Barrier Reef marine park area.[16]

1.44 Labor Senators believe that this short track record shows that the Minister is incapable of standing up to his Cabinet colleagues to even maintain national environmental standards.

1.45 In June 2014 the World Heritage Committee delivered a harsh verdict on the Government's failure to protect the Great Barrier Reef.

1.46 At its annual meeting the committee voted to keep alive their threat to list the Great Barrier Reef 'in danger' the Committee also labelled the handover of federal environmental approval powers to the Queensland Government as 'premature'.[17]

Capacity and Readiness of States and Territories to Implement Approvals Process

1.47 The Chair's report summaries concerns of a number of submissions that the states and territories do not have the capacity and are not ready to implement bilateral approval agreements and processes.

1.48 The only arguments the Chair's Report provides against these propositions are that the draft approval bilateral agreement with New South Wales allows for the embedding of officers from the Department of Environment and that the Commonwealth relies on State Government processes in the assessment phase.

1.49 As raised earlier in the Dissenting Report, the notion of embedding Department of Environment officers in State Governments was raised in the Business Council of Australia's submission, in what has been implied to mean that the BCA has little confidence in the capacity and readiness of states and territories.

1.50 In regards to the duplication of effort, Labor Senators note that there have been long standing assessment bilateral agreements with states and territories and that this method of assessment has significant value for all parties.

---

16 Professor Stewart Lockie, *The Conversation*, 'Is the Coalition's Green Army good news for Landcare?', 6 September 2013, http://theconversation.com/is-the-coalitions-green-army-good-news-for-landcare-17936 (accessed on 20/06/2014); Professor Alan Pears, The Conversation, Billions axed in clean energy: renewable target is next, 14 May 2014, http://theconversation.com/billions-axed-in-clean-energy-renewable-target-is-next-26578 (accessed on 20/06/2014) Tony Allan, ABC Rural News, Landcare and research cuts in Budget, 13 May 2014, http://www.abc.net.au/news/2014-05-13/budget-overview/5441510 (accessed on 20/06/2014); Department of the Environment, Approval Abbot Point Terminal 0, Terminal 2 and Terminal 3 Capital Dredging, Queensland, 10 December 2013, http://www.environment.gov.au/epbc/notices/assessments/2011/6213/2011-6213-approval-decision.pdf (accessed on 20/06/2014)

17 Tom Arup, Sydney Morning Herald, Australia on notice over Great Barrier Reef's environmental damage, 18 June 2014, http://www.smh.com.au/environment/conservation/australia-on-notice-over-great-barrier-reefs-environmental-damage-20140618-zsdts.html (accessed on 20/06/2014)

Potential Conflicts of Interest

1.51 The Chair's Report notes that a number of submissions highlighted that there are potential conflicts of interest as a state or territory government's role as the proponent of a project. The Chair's Report fails to include the evidence from Dr Chris McGrath that the draft approvals bilateral agreements were, before the election, not going to allow states to make decisions over projects where they were the proponent.

> The (Abbott) government and the current environment minister said before the election that they would be not allowing states to make decisions over projects where they were the proponent as well as a couple of other things, and they have not done that under the (draft) approval bilaterals.[18]

1.52 A small amount of focus was given to the other obvious potential conflict of interest – a state or territory government's focus on local development in its region of the country and where an economic development or planning minister or official is set to be responsible for approving projects relating to matters of national environmental significance. Dr Chris McGrath stated his concerns in evidence to the hearing:

> (The approvals decision) should be made by the federal environment minister, who is your best chance of having someone who is there protecting matters of national environmental significance. Under the Queensland approval bilateral, you are giving the decision to the state Coordinator-General, who is a public servant whose core purpose is to develop the state. It is not about protecting the environment at all.[19]

1.53 The Chair's Report includes an example from the Department where the Federal Defence Minister may be the proponent and the Federal Environment Minister the decision maker as evidence that conflicts are managed now. Labor Senators believe that this example to be vastly different to the Queensland example where the Co-ordinator General is both the proponent and the decision maker.

1.54 Labor Senators are concerned that while the Department is confident it will "know the kinds of things that the states and territories are assessing and considering", it can't provide a clear assurance that the Commonwealth will be alerted to every conflict of interest and that states and territories have the capacity to appropriately manage real and perceived conflicts of interest.

Schedule 2 – Flexibility in Performing Assessment of Controlled Actions

1.55 The Schedule sets out for the Department of Environment to complete the approval process where an approval bilateral agreement is suspended, cancelled or ceases to apply.

1.56 Labor Senators are concerned that at a time when the Commonwealth Government is reducing employment levels at the Department of Environment by 480 positions, there will be insufficient excess capacity to deal with incomplete approval processes.

---

18 Dr Chris McGrath, Private Capacity, Committee Hansard, 10 June 2014, p. 71.

19 Dr Chris McGrath, Private Capacity, Committee Hansard, 10 June 2014, p. 72.

1.57 Labor Senators are concerned that this will either lead to delays to approval processes, delays to other work of the Department of Environment or calls on consolidated revenue for additional funds.

Schedule 3 Part 1 – Amendments Relating to Water Resources

1.58 The Schedule will not remove the water trigger from matters of national environmental significance, but will allow for the Minister to accredit state and territory processes to approve matters previously prohibited for approval by a state or territory government.

1.59 The Chair's Report notes a number of arguments against the delegation of powers around the water trigger because of the cross jurisdictional boundaries of water and the insufficient capacity or conflict of interest of state and territory governments.

1.60 The Chair's Report notes the Minerals Council's opposition to the water trigger is because it 'effectively' duplicates a process and that other industry groups also oppose the water trigger. Mr Chris McCombe of the Minerals Council provided an example of the ”effective” duplication:

> The broad EIS information that is collected for a project is not suitable to be provided to the Commonwealth for assessment under the water trigger. They have to take the material and create essentially mini environmental impact statements, package them up and send them off to meet the very specific requirements of the water trigger under the EPBC Act.[20]

1.61 As the Chair's Report notes, the water trigger was put in place because of state and territory government’s inability to adequately deal with threats to water resources, particularly cross jurisdictional water resources such as the Great Artesian Basin and Murray Darling Basin. Labor Senators consider the specific requirements of the water trigger are to not be duplicative because of the very nature of the issue; that the water resource is of national significance and a national approach to decision making is needed.

Schedule 3 Part 2 – Amendments Relating to Bilaterally Accredited Authorisation Processes

1.62 The Chair's Report briefly notes the concerns raised by a number of submissions on the ground that policies and processes are not subject to public or parliamentary oversight.

1.63 In addition to the evidence included in the Chair's report, Labor Senators wish to highlight further evidence of a number of witnesses on the potential issues from using policies or guidelines that aren't subject to public or parliamentary oversight.

---

20 Mr Chris McCombe, Minerals Council, *Committee Hansard*, 10 June 2014, p.60.

1.64 Ms Walmsley summarised the concerns of many submissions in evidence to the hearing:

> In a lot of jurisdictions, a significant amount of detail is in a policy or a guideline. If they are accredited, the Commonwealth may be able to say, 'At the point of accreditation, yes, those standards were in the guidelines.' But, without parliamentary oversight or scrutiny, guidelines can be changed at a state level, and they regularly are. Even if a standard may exist in a guideline at the time an accreditation is officially done, those guidelines may change.[21]

1.65 Mr Tom Warne-Smith from Environmental Justice Australia further expanded on how approval bilaterals remove the guarantee certain national standards will be met in evidence to the hearing:

> The fundamental problem with the bill is that it removes the protections that guarantee those standards. In adopting policies and guidelines we have removed the requirements that decision makers are firmly bound to particular considerations.
>
> The significant problem in the bill is that it removes the mechanism for maintaining consistency by allowing policy and guidelines to be utilised and relied on in the scheme, when decision makers themselves cannot rely on those instruments. In applying those instruments as they apply from time to time and removing the parliamentary oversight and the public consultation process that is required for bilaterals, we are removing the guarantee that certain standards will be met.[22]

1.66 Mr Bradley Tucker from the Wentworth Group of Concerned Scientists provided the Committee with substantial evidence regarding the draft policies under the New South Wales and Queensland bilaterals:

> They are delegating approvals under bilaterals that have draft policies which give state bureaucrats discretion without having to justify their discretion. That, to me, in no way would satisfy the protection of a matter of national environmental significance.
>
> The New South Wales draft policy allows for a broader category of supplementary measures to constitute an offset. This is currently capped at 10 per cent in the Commonwealth policy. While the New South Wales policy only limits research and education measures to 10 per cent, it does allow a broader range of measures to fulfil the other 90 per cent. The other reason why New South Wales does not meet the Commonwealth standard is that, in cases where there might be social or economic benefits that accrue in New South Wales, biodiversity offsets can be discounted.

---

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

22 Mr Tom Warne-Smith, Environmental Justice Australia, *Committee Hansard*, 10 June 2014, p. 11, p. 16.

> With respect to Queensland, there is a significant amount of detail in their legislation that is still to be formed around their offsets and how they might meet Commonwealth standards. The main issue there is that the bilateral agreement will accredit supporting guidelines and they are only in draft form and not finalised. Also, the agreement for offsets is not necessarily in accordance with the offsets assessment guide, so there could be projects in Queensland that fall short of meeting the Commonwealth offsets guide, as long as they apply the Commonwealth policy. It might not be in accordance with the offsets assessment guide, so there could be a lesser offset applied in Queensland.[23]

1.67 Dr Chris McGrath described the lack of parliamentary oversight "as a minefield" and at evidence to the hearing and expanded on this point:

> I am looking at this from a judicial review perspective. I think there is a minefield. Even if they were reflected in law, I think it is a minefield of how the Commonwealth tries to enforce them. Not having them reflected in law and allowing policies and those sorts of things is just making it murkier. If you look at the draft approval bilaterals in Queensland, clearly the coordinator-general's act, the State Development and Public Works Organisation Act, is being amended to include a special designation process for when things are under the approval bilateral. In New South Wales, as I understand, most of the laws are not being amended to deal with it.[24]

1.68 In response, the Chair's Report includes an answer from the Department that there must be a 'legislative hook' for a policy or process. However, the Chair's Report does not provide evidence that there would be legal enforcement of standards in approved state and territory policies and guidelines.

1.69 Labor Senators consider it inappropriate to give this level of flexibility to state and territory governments.

Schedule 4 – Minor Amendments of Bilateral Agreements

1.70 The Chair's Report notes that the Commonwealth Environment Minister may approve minor amendments to accredited processes without the need for parliamentary oversight or public consultation.

1.71 The Chair's Report notes a comprehensive example from ANEDO where Schedule 4 together with Schedule 3 Part 2 could be used by a state or territory government to alter procedures then have an approval granted by the Commonwealth Environment Minister retrospectively. The example continues that neither action may require parliamentary oversight or public consultation and the amendment needs only to meet the Minister's definition of not have a 'material adverse impact'.

---

23 Mr Bradley Tucker, Wentworth Group of Concerned Scientists, *Committee Hansard*, 10 June 2014, p. 55.

24 Dr Chris McGrath, Private Capacity, *Committee Hansard*, 10 June 2014, p. 70.

1.72 The Chair's Report notes evidence from the Department that without Schedule 4 small changes would cause significant uncertainty for the operation of bilateral agreements.

1.73 Labor Senators consider it inappropriate to give this level of flexibility to state and territory governments as outlined in detail in response to Schedule 3 Part 2.

Schedule 5 – Miscellaneous Amendments

1.74 The Chair's Report notes that a miscellaneous amendment will increase the range of entities allowed to approve actions to potentially include local government or a state or territory environmental court or tribunal and that a number of submissions were opposed on the grounds of capacity to act in national interest, potential conflicts of interest and negative impacts on maintenance of strong environmental standards. The explanation from the Department sought to highlight that the amendment will change the focus from the identity and legal status of the decision maker to the decision maker's ability to adhere to high environmental standards.

1.75 The Chair's Report did not include the evidence provided to the hearing by Mr Graham Short of the Association of Mining and Exploration Companies who said:

> We would not be supportive of that particular concept. There are already some issues that have arisen by various planning processes and planning schemes and town planning schemes by local authorities that do not have an understanding of the mining industry. I am pretty sure that our membership would not support the concept of local councils or local authorities being involved in the decision-making process.[25]

1.76 Labor Senators note the opposition to the devolution of decision making to local government or a state or territory environmental court or tribunal from ENGOs and the mining industry and do not support the amendment.

Conclusion

1.77 Labor Senators note that the Chair's report relied heavily on the assurances of officials from the Department of the Environment about the adequacy of the proposed process for one-stop shop approvals.

1.78 Labor Senators are concerned that this Bill will lead to a more complicated process, that some submissions have titled an eight-stop shop, particularly in the foreseeable future while the Commonwealth Department of the Environment works to bring state governments up to national environmental standards.

1.79 Labor Senators are also concerned that this Bill does not contain adequate safeguards to ensure the maintenance of current environmental standards, particularly given the track record of the Abbott Coalition Government on the environment.

25 Mr Graham Short, Association of Mining and Exploration Companies, *Committee Hansard*, 10 June 2014, p.24

Recommendation:

1.80 The Australian Labor Party Senators reject the arguments in the Chair's Report in support of the Environmental Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 and recommend that it not be passed.

Senator Anne Urquhart
Deputy Chair
Senator for Tasmania

Senator Louise Pratt
Senator for Western Australia

Australian Greens Dissenting Report

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

1.1 This Bill would facilitate the handover of Commonwealth powers to approve damaging projects under the Environment Protection and Biodiversity Act (EPBC Act) to State and Territory governments, local governments and other unspecified bodies. It winds back environmental regulation in Australia by 30 years and leaves our precious plants, animals and places vulnerable to environmental vandalism like never before.

1.2 The Australian Greens opposed this bill in the House and will oppose it in the Senate.

Our national environmental laws

1.3 Our national environment law, the EPBC Act, was passed in 1999 by the Howard government. The EPBC Act is designed to give Australia's Environment Minister the power to protect the places and animals which are so important that they matter to all Australians: World Heritage Areas, threatened species and ecological communities, National Heritage, Ramsar wetlands, migratory species, the Great Barrier Reef, nuclear actions, water resources threatened by coal or coal seam gas, and Commonwealth land and waters.

1.4 All developments that would have a significant impact on any of those "matters of national environmental significance" currently require approval from the Federal Environment Minister. State assessment processes are currently accredited by the Commonwealth under agreements called "assessment bilateral agreements" so proponents do not have to undertake two separate environmental impact assessments, but separate approvals are still required from the State and the Commonwealth governments.

1.5 The Australian Greens have always supported a strong role for the Commonwealth in protecting the environment. It is in Australia's national interest to have robust national environmental protections to fulfil our international obligations and to protect nationally significant matters. Most importantly, strong national environmental laws give effect to the community's strongly held and often forcefully expressed desire for Commonwealth protection for our precious places.

1.6 Sadly, our environment laws are already failing us. Australia's environment and biodiversity are clearly in decline. The number of threatened species has nearly tripled in the last twenty years and we are in a biodiversity crisis. The Great Barrier Reef has lost half its coral since the 1980s, and could lose another half in the next decade. We have lost valuable places and wildlife to the thousands of damaging developments that have already gone ahead. These laws haven't been able to protect parts of our environment which need protection.

1.7 What is needed is radical strengthening of our federal environmental laws – not a wholesale hand-off of powers down to pro-development state governments.

Previous attempt to hand over approval powers

1.8 The Australian Greens oppose the handover of approval powers, and have done so whichever government has proposed it.

1.9 In 2012, the Federal Labor government proposed to pursue similar approval bilateral agreements with State and Territory governments. That proposal was abandoned in after December 2012 after strong criticism from environment groups, the broader community and the Greens, and sustained warnings that environmental standards would be eroded, and that the system would in fact become complex.

1.10 The Australian Greens introduced a Bill to remove the ability for the Commonwealth to hand over approval powers, but it was not supported.[1]

1.11 Nevertheless, a Senate inquiry into that Bill by this Committee found in March 2013, that 'it is not appropriate for the states and territories to exercise decision making powers for approvals in relation to matters of national environmental significance.'[2] (*emphasis added*)

State governments cannot be trusted

1.12 State governments have a track record of environmental vandalism. If State and governments had their way, the Great Barrier Reef would be scarred by oil rigs, and the Franklin River in the Tasmanian Wilderness World Heritage Area would be dammed.

1.13 In recent times, State governments have been the most enthusiastic backers – or proponents – of damaging and dangerous projects which were rejected by the Commonwealth, such as the proposal to graze cattle in the Alpine National Park, the Mary River Dam, the Galilee mega coal mines, the Abbot Point dredging project, and the proposed gas hub at James Price Point.

1.14 The failure of Regional Forestry Agreements to protect native forests all over Australia further demonstrates how dangerous it is to leave environment protection to the states.[3]

1.15 This poor track record provided the original rationale for the EPBC Act, so the handover of approval powers is a serious backwards step.

---

1 The Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012. The homepage of this Bill and second reading speech can be viewed here: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s894

2 Committee Report, para 2.47, Senate inquiry into the Environment Protection and Biodiversity Conservation Amendment Retaining Federal Approval Powers) Bill 2012.

3 See the report One Stop Chop – How regional forest agreements streamline environmental destruction <http://www.edotas.org.au/one-stop-chop/>

1.16 As the Australian Conservation Foundation submitted,

> It is ACF's experience over 50 years that States and territories frequently fail to act in the national interest in managing the environment. The Commonwealth is best placed to consider national and cross-border issues and make decisions in the national interest.[4]

Environmental standards will fall

1.17 The Government has ceaselessly repeated the assertion that environmental standards will be maintained, but this runs squarely against the available evidence. Under the handover of powers, State, Territory and local government decision makers would have little inclination, capacity, or incentive to maintain environmental standards.

1.18 The standards won't change the states' poor attitude and record on environment protection, and they can't prevent states determined to approve projects which will damage the environment. Compliance will be a key problem - the states will find a way around the standards or deliberately flout them, as we've seen when the Queensland Government refused to comply with the assessment standards for the Alpha coal mine in Queensland.

1.19 Crucially, the federal environmental laws leave a lot of discretion about approvals and conditions to the decision maker – currently the federal Environment Minister – and under the planned hand-off of powers, that discretion would be exercised by the State Ministers, who have a track record of environmental vandalism. The standards do not constrain that discretion. As Dr Chris McGrath submitted,

> The requirements for bilateral agreements in Pt 5 of the EPBC Act … do not change the highly discretionary nature of any decision to approve an action or impose conditions. This means that the identity of the decision-maker and their values are critical factors in the decision that is reached. Unlike, for example, applying things like building standards that are highly prescriptive and quantifiable, decision-makers under the EPBC Act are required to consider broad qualitative criteria such as "economic and social matters" and that the decision must not be inconsistent with Australia's international obligations. Decisions made by a State or Territory government under an approval bilateral will be similar. The weighing-up process inherent in reaching such a decision means that there is no "standard" that is enforceable in any meaningful way.[5] (*references omitted*)

1.20 The identity of environmental decision makers matters a great deal. Although draft approval bilateral agreements have not been published for each state, the Queensland draft agreement proposes to accredit the Coordinator-General under the *State Development and Public Works Organisation Act 1971* (SDPWOA Act). Under Queensland legislation, the Coordinator-General is an unelected public servant who is not bound to consider ecologically sustainable development in making decisions.

---

4 ACF, submission 46, p. 2.

5 Dr Chris McGrath, submission 1, attachment 1, p. 25.

Instead, their statutory role is to facilitate economic development via major infrastructure and resources projects. This mandate is utterly inconsistent with exercising approval powers under the EPBC Act.

1.21 It remains the federal government's job to look after the most important and precious of Australia's environment assets, which are of international significance, like the World Heritage Great Barrier Reef. No standard will be able to replace the protection that is meant to be provided by the federal Government for our precious places and wildlife, because of our international obligations to do so.

Authorisation processes in subordinate instruments

1.22 One truly farcical aspect of the Bill is the proposal to accredit non-legislative instruments such as policies or guidelines to take the place of federal environmental laws. Locating critical national environmental protections in such non-statutory instruments makes a sham of Government's claim that environmental standards will be maintained. Environmental Justice Australia submitted that such instruments engender uncertainty:

> Guidelines cannot be expressed to fetter a discretion under an Act. A decision maker must "give proper, genuine and realistic consideration to the merits of the case and be ready in a proper case to depart from any applicable policy". So whilst a guideline or policy may purport to direct or require a particular outcome or to require that something be done in a particular way great care needs to be taken that that is what is in fact required or permitted by the Act.[6] (*references omitted*)

1.23 Environmental Justice Australia also observed that the language of the Bill permits accredited processes under approval bilateral agreements to be set out in an instrument which is not made under a law. That is, the standards need not be legally binding at all.

> The Explanatory Memorandum further explains that "To do so, subparagraph 46(2A)(a) provides that an authorisation process must be set out in or made under a law of the State or Territory or be set out in an instrument made under such a law."
>
> The explanatory memorandum is not strictly correct it its description of the clause. The Bill in fact only requires that the process be set out wholly or partly in or under a law or in an instrument. This means that a significant part of the process being accredited may not be set out in or under an Act or legislative instrument of the relevant State or Territory.[7]

1.24 Allowing the state or local governments to assume responsibility for internationally significant environmental assets and not even requiring them to reflect the federal standards in their own laws makes an absolute mockery of the Abbott Government's claims that the standards will be complied with. This bill ensures that

---

6 Environmental Justice Australia, submission 54, p. 6.

7 Environmental Justice Australia, submission 54, p. 5.

the standards currently enshrined in the EPBC Act will be watered down and disregarded, as they may exist in mere guidelines, plans or policies.

State and Territory processes and regulatory capacity are inadequate

1.25 State and Territory governments lack the processes and regulatory capacity to administer the EPBC Act and safeguard matters of national environmental significance.

1.26 They should not be entrusted with further responsibilities, especially since many are going through budget cuts. There will not be the staff to undertake additional responsibilities and protect the national environment.

1.27 Under Queensland's draft approval bilateral, it is proposed to accredit the SDPWO Act, which has recently been amended, but not to the extent that it meets the standard of the EPBC Act. Experts are united in their agreement that currently no state law anywhere in the country meets the level of the EPBC Act.[8]

1.28 Dr Chris McGrath stated that:

> 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 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.[9]

1.29 State public service cuts have degraded often already weak regulatory capacity, leaving State government wholly unsuitable to exercise EPBC Act responsibilities, which will include compliance monitoring and enforcement. ACF submitted that:

> Multiple State Auditor-Generals' reports have found that state governments are struggling to fulfil their existing statutory obligations. In Victoria the Auditor General found that less than half of the states' listed threatened species and communities had the required management statements completed, and estimated that at the current rate of progress it would take the Victorian Department of Sustainability and Environment an astonishing 22 years to complete them … The Queensland Auditor General's report made it clear that the Queensland Environment department "is not fully effective in its supervision, monitoring and enforcement of environment

8 Australian Network of Environmental Defenders Offices, submission 49

9 Committee Hansard, 10 June 2014, p. 70

> conditions and is exposing the state to liability and the environment to harm unnecessarily".[10]

1.30 A similar verdict was reached by Western Australia's Auditor General in 2011.[11]

1.31 Job cuts have degraded the capacity of the Queensland, New South Wales and Victorian Environment Departments to police regulation. ACF submitted that:

> …in Queensland the [E]nvironment and Heritage Protection Department was cut 16% (220 redundancies) in 2012-13. In the absence of additional resources increasing both biodiversity budgets and staff, it seems highly unlikely the states could execute delegated powers adequately.[12]

Potential for conflicts of interest

1.32 The proposed handover of approval powers highlights an unresolvable conflict of interest: State and Territory governments often play too active a role in, and benefit too directly from, major resources and development projects to exercise independent judgement.

1.33 An even more galling conflict of interest would occur where State governments or their instrumentalities are themselves the proponents of projects. This bill allows such actions to be covered by approval bilateral agreements, meaning states will be ticking off on their own projects – well and truly the fox in charge of the henhouse.

1.34 The Mary River Dam project in Queensland was one such proposal. The proponent was a State government owned corporation. Dr Chris McGrath submitted that:

> The Commonwealth Environment Minister at the time, Peter Garrett, was dissatisfied with the Coordinator-General's assessment and requested independent experts to review the EIS. They found major deficiencies in it. Based on this independent advice he refused the dam due to "unacceptable impacts" on threatened species such as the Mary River cod and Australian lungfish … Had an approval bilateral been in place at the time when the dam was proposed, it is certain that the Queensland Government would have approved it being built and severe impacts on the listed threatened species would have occurred.[13]

1.35 The existence of a conflict of interest was illustrated well by Mr Klatovsky of the Places You Love Alliance in relation to James Price Point in Western Australia. The relevant approval by the Western Australian environment minister was later found to be unlawful. Mr Klatovsky stated:

---

10 ACF, submission 46, p. 3.

11 Western Australian Auditor General, 2011, *Ensuring Compliance with Conditions on Mining,* <https://audit.wa.gov.au/wp-content/uploads/2013/05/report2011_08.pdf>

12 ACF, submission 46, p. 3.

13 Dr Chris McGrath, submission 1, attachment 1, p. 16.

> It was a development where the proponent was not the gas companies; the proponent was the Department of State Development. The Minister for State Development was the proponent, and he also happened to be the Premier. In this circumstance, the Premier of Western Australia was the proponent for a $47 billion gas hut. He was on TV and in the papers every day pushing the case for this development.[14]

Local governments are wholly unsuitable

1.36 This Bill also allows local governments, and potentially other bodies such as unelected expert panels to be accredited to make approval decisions under the EPBC Act. This is a deeply alarming development. Local councils are not financially equipped to make those decisions, and certainly lack the necessary expertise and perspective to do so. It is also well-acknowledged that they are vulnerable to undue influence and corruption. Local governments do a sterling job with their existing responsibilities but are wholly unsuitable to discharge the national interest.

Call-in power in the draft approval bilateral agreements

1.37 Much was made by the Government of the reserve 'call-in' power which has been written into the draft approval bilateral agreements with Queensland and New South Wales. The contradiction in assuring the public that the states are up to the job yet retaining a federal call-in power seems lost on the Government.

1.38 Sadly the call-in power is wholly inadequate to protect the national environment. It sets a test for re-intervention by the Commonwealth at a much higher bar than the current EPBC Act, and requires a level of knowledge about the inadequacy of a state process to properly assess a proposal, and in a limited period of time (before the approval is issued) that will be impossible for the federal Environment Minister to meet given reductions in staff. Where will the federal staff be to monitor the states in order to inform the federal environment minister in a timely manner of the need for a call-in? They will have been redeployed or sacked, according to the evidence given to me in Budget Estimates 2014. Alternatively, the call-in can be exercised if the state government tells the federal government that the state is falling short – and one can hardly expect a state to own up to being environmentally inadequate.

1.39 There will be no political will for the federal Environment Minister to call projects in, no staff to alert them in a timely manner of the need to do so, and no realistic prospect of the high bar for a call-in being able to be met.

1.40 The federal government already only has a sliver of environmental powers – they only have responsibility when there is a significant impact on a matter of national environmental significance. Plans to retain just a sliver of that sliver will lead to business uncertainty, and the hand-off remains an abrogation of their responsibility to protect all nationally and internationally significant parts of Australia's environment. The role of the federal government in protecting our national environment should not be open to negotiation by big business and state governments.

---

14 Committee Hansard, 10 June 2014, p. 1.

Lack of evidence base to justify handing off environmental powers

1.41 The duplication argument used by the government to justify washing their hands of all environmental responsibilities right when they are most needed is a furphy.

1.42 There is no credible evidence of the need for these proposed reforms, nor evidence that the environmental risks can be managed. Government appears to have blindly accepted the claims of the mining industry and Business Council of Australia about duplication and the compliance costs of environmental protection laws without seeking a sound evidence basis for those claims. Even the industry themselves cannot come up with concrete examples of where the federal environmental approval phase of an assessment process, a mere 28 days, delays a project.

1.43 Any delays in the environmental approvals process would occur during the assessment phase (often because the developer has not provided sufficient information), so it is at the assessment phase that reforms should be directed – not at the approval phase which cannot deliver any significant streamlining and will simply deliver environmental corner-cutting.

Handing over the water trigger

1.44 The proposal in this Bill to hand over the recent federal protection for water from significant impacts by coal and coal seam gas (CSG) (the "water trigger") is a slap in the face to all communities facing the onslaught of coal and CSG on their land and water.

1.45 The abject failure of state governments to properly regulate the industry and to legislate adequate protections for ground and surface water was precisely the reason the rural Independents and Greens worked to ensure the previous Labor Government implemented federal protection. The water trigger came about as a result of overwhelming community concern about the lack of appropriate protection for groundwater by the States, and the continuing scientific concern about long term impacts on groundwater quality and quantity.

1.46 Giving away these newly acquired federal powers to act in the national interest to protect water – and by extension, farmland, communities, the climate and the Reef – is a kowtow to the big miners the likes of which is sadly becoming common under this Government.

> The Lock the Gate Alliance and our members are 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.[15]

1.47 The Wilderness Society simply describes the proposal as 'not only a broken promise, but also a potential disaster'.[16]

---

15 Lock the Gate Alliance, submission 24, p. 5.

16 The Wilderness Society, submission 56, p. 4.

Conclusion

1.48 The Australian Greens believe that passing this Bill to facilitate the handing over of Commonwealth environmental approval powers to States, Territories, local government, and other as yet unspecified persons would be hugely destructive backwards step.

1.49 The hand-off of proposal under the EPBC Act as it stands is a recipe for environmental destruction, but this bill worsens the situation by giving away new powers to protect water, by removing the requirement for federal standards to be reflected in state laws and by allowing local Councils or other accredited agencies to perform the obligations of the Commonwealth.

1.50 This bill ensures that the standards currently enshrined in the EPBC Act will be watered down and disregarded, as they may exist in mere guidelines, plans or policies.

1.51 When combined with the existing pro-development attitude of state governments and the lack of political will to refuse development applications, the atrocious environmental track record of states, the states' role to promote the state and not the national interest, the staff cuts in various state environment departments, the discretion inherent in decision-making that means it matters who makes the final decision, the existing inadequacy of state environmental laws, and the inherent conflict of interest where state governments are the proponents for development that they will now have the final tick off on, the Abbott Government has confirmed itself to be the worst federal government for the environment in Australia's history.

1.52 This bill is the biggest step backwards in environmental protection in 30 years, and the Australian Greens will fight it with every fibre of our being.

Recommendation: That the bill not be passed.

Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

1.53 The Australian Greens support the principle that proponents should pay for the cost of regulating their damaging conduct, but cannot support this Bill.

1.54 There is a well-recognised literature on 'regulatory capture' in which a regulatory agency which is supposed to act in the public interest is compromised by too-close relationships with those it is charged with regulating. The Department of Environment, in through Senate Estimates hearings in February 2014 has displayed a startling lack of engagement with this concept, even though it is a key risk to their effectiveness.

1.55 Given the chronic under-resourcing and consequent under-staffing of the Department of Environment, the Australian Greens fear that dependency on fees from proponents will further compromise the Department's ability to maintain its independence. Without proper safeguards, the risk of regulatory capture flowing from dependence on fees for service cannot be managed.

Recommendation: That the bill not be passed.

Senator Larissa Waters
Senator for Queensland

Appendix 1

Submissions, tabled documents and answers to questions taken on notice

Submissions

1	Dr Chris McGrath
2	Mr Richard Sharp
3	Ports Australia
4	Australian Forest Products Association
5	Friends of Underwood Avenue Bushland
6	Wildlife Preservation Society of Queensland - Sunshine Coast & Hinterland Inc
7	Heritage Infrastructure and Planning Group, Magnetic Island Community Development Association Inc
8	AMEC
9	Mr Jim Allen
10	Dr Catherine Pye
11	Blacktown & District Environment Group In
12	Ms Pat Schultz
13	Premier of Queensland
14	Mulgoa Valley Landcare Group Inc
15	Hunter Environment Lobby Inc
16	Urban Bushland Council WA Inc
17	Mr Steve Burgess
18	Community Over Mining
19	Doctors for the Environment Australia Inc
20	North Queensland Conservation Council
21	NSW Irrigators' Council
22	Wildflower Society of Western Australia
23	Ms Clarissa Watson
24	Lock the Gate Alliance
25	Australian Koala Foundation

26 Ms Joanna McCubbin
27 Ms Wendy Hawes
28 Environment East Gippsland Inc
29 Save the Mary River Coordinating Group Inc
30 National Farmers' Federation
31 Humane Society International
32 Minerals Council of Australia
33 Department of the Environment
34 WWF-Australia
35 Mr Owen Noonan
36 Dr Yung En Chee
37 Ms Anne Daw, Round Table for the Roadmap of Unconventional Gas Projects in South Australia
38 QGC
39 The Green Institute
40 Ms Wendy White
41 Friends of Grasslands
42 Healesville Environment Watch Inc, Friends of Leadbeater's Possum Inc and MyEnvironment Inc
43 Medical Association for Prevention of War
44 Friends of the Earth Australia
45 Business Council of Australia
46 Australian Conservation Foundation
47 Ms Belinda Noonan
48 Climate and Health Alliance
49 Australian Network for Environmental Defender's Offices Inc
50 Queensland Murray-Darling Committee
51 Victorian Association of Forest Industries
52 Australian Petroleum Production & Exploration Association Limited
53 Wentworth Group of Concerned Scientists
54 Environmental Justice Australia
55 Places You Love Alliance
56 The Wilderness Society Inc

57 Indigenous Advisory Committee

58 Australia International Council on Monuments and Sites

59 Public Health Association of Australia

60 Mr David Arthur

61 Environment Centre NT and the Conservation Council of WA

62 Mary River Catchment Coordination Association Inc

63 Property Council of Australia

64 Lawyers for Forests

65 Urban Development Institute of Australia

66 Australian Orchid Council

67 Trust for Nature

68 Environment Centre NT

Tabled documents

Humane Society International - Letter, dated 3 June 2014, to Mr Christopher Briggs, Secretary General, Ramsar Secretariat, Switzerland, regarding Australia's obligations under the Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (Ramsar Convention) (tabled at public hearing, Melbourne, 10 June 2014)

Humane Society International - Letter, dated 3 June 2014, to Dr Bradnee Chambers, Executive Secretary, UNEP/CMS Secretariat, Germany, regarding Australia's obligations under the Convention of the Conservation of Migratory Species of Wild Animals (tabled at public hearing, Melbourne, 10 June 2014)

Answers to questions taken on notice

Department of the Environment (from public hearing, Melbourne, 10 June 2014)

Appendix 2
Public hearings

Tuesday, 10 June 2014 – Melbourne

Australian Conservation Foundation

Ms Ruchira Talukdar, Healthy Ecosystems Campaigner

Places You Love Alliance

Mr Glen Klatovsky, Director

Environmental Justice Australia

Mr Brendan Sydes, Chief Executive Officer

Mr Tom Warne-Smith, Lawyer

Association of Mining and Exploration Companies

Mr Graham Short, National Policy Manager

Australian Network of Environmental Defender's Offices

Mr Adam Beeson, Solicitor

Ms Rachel Walmsley, Policy and Law Reform Director

Humane Society International

Mrs Alexia Wellbelove, Senior Program Manager

Department of the Environment

Dr Rachel Bacon, First Assistant Secretary, regulatory Reform Branch

Ms Kushla Munro, Assistant Secretary, Regulatory Reform Branch

Wentworth Group of Concerned Scientists

Mr Peter Cosier, Director

Ms Ilona Millar, Legal Adviser

Mr Bradley Tucker, Policy Analyst

Minerals Council of Australia

Mr Chris McCombe, Assistant Director, Environment

Ms Melanie Stutsel, Director, Health, Safety, Environment and Community

Dr Chris McGrath, Private capacity