

# Chapter 1

## Background

### Referral and conduct of the inquiry

1.1 On 12 October 2006, the House of Representatives introduced the Environment and Heritage Legislation Amendment Bill 2006 (the Bill). A lengthy explanatory memorandum accompanied the Bill.

1.2 The provisions of the bill were referred to the Senate Standing Committee on Environment, Communications, Information Technology and the Arts, for inquiry and report by 17 November 2006.

1.3 On 18 October 2006, the Senate granted an extension of time to report until 21 November 2006.

1.4 The committee corresponded with a large number of individuals, environment and heritage departments and agencies, industry bodies and other key stakeholders, and invited them to provide a submission to the committee's inquiry.

1.5 In accordance with its usual practice, the committee also sought public comment by advertising the inquiry in *The Australian* on Tuesday 16 October 2006, calling for submissions by Friday 27 October 2006.

1.6 The committee received 138 submissions to its inquiry (see Appendix 1).

1.7 The committee held two public hearings in Canberra; on Friday 3 November 2006 and Monday 6 November 2006. The committee heard evidence from a number of witnesses, including representatives of key environment and heritage protection groups and natural resource managers, industry representatives, and government departments including the Department of Environment and Heritage. A complete list of witnesses is provided at Appendix 2.

1.8 A number of questions were placed on notice at the hearing. Those questions and responses are at Appendix 3.

1.9 Published submissions and the *Hansard* of the committee's hearings are tabled with this report, together with supplementary material provided to it following the committee's hearings. Submissions and transcripts of the committee's hearings are available on the Parliament's internet site at [www.aph.gov.au](http://www.aph.gov.au).

### *Acknowledgements*

1.10 The committee acknowledges the assistance and contribution made to its inquiry by those who prepared and provided written and oral submissions to the

inquiry. Their work has been of considerable assistance to the committee, particularly given the timeframe for the inquiry.

### **Scope of the report**

1.11 The inquiry focused on the provisions of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006. This bill makes a series of amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) and related Acts.

1.12 According to the explanatory memorandum, the bill proposes to amend the Act to make it more efficient and effective, to allow for the use of more strategic approaches and to provide greater certainty in decision making.

1.13 In particular the bill:

- reduces processing time and costs for development interests;
- provides an enhanced ability to deal with large scale projects and give priority attention to projects of national importance through the use of strategic assessment and approvals approaches and putting in place measures to enable developers to avoid the impacts on the matters of National Environmental Significance protected by the Act;
- enables a better focus on protecting threatened species and ecological communities and heritage places that are of real national importance; and
- clarifies and strengthens the enforcement provisions of the Act.<sup>1</sup>

1.14 The explanatory memorandum stated that these changes would be made without weakening the protection that the Act provides for Australia's biodiversity and heritage.

1.15 This report addresses the various aspects of the bill that have been raised as issues of interest or concern, and that have been examined during this inquiry by the committee.

1.16 The individual components have been separated to enable discussion of the key issues. Chapter 1 provides background and overview of the bill. Chapter 2 considers the provisions relating to proposed development actions. Chapter 3 examines the changes in relation to heritage listings and nominations. Chapter 4 focuses on a range of new enforcement and penalties provisions. Chapter 5 considers the changes made to threatened species and ecological communities. Chapter 6 deals with other issues raised during the inquiry.

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1 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 1.

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## Background to the bill

1.17 The Environment and Heritage Legislation Amendment Bill amends the *Environment Protection and Biodiversity Conservation Act 1999* to refine the provisions of the Act as it currently exists.

1.18 The Act provides a comprehensive national approach to environmental protection that deals with a wide range of environment and heritage issues, and clarifies the linkages between the Australian Government and state and territory governments by providing mechanisms for consultation and cooperation between those governments.

1.19 Practical application of the Act over the last six years has revealed that there are ways in which the operation of the Act can be improved to optimise its efficiency while maintaining and enhancing its environmental effectiveness, and the purpose of the Bill is largely to introduce increased efficiencies.<sup>2</sup>

1.20 Each year since the Act's inception the Department of the Environment and Heritage has carried out a review of the operation of the Act and has published an annual report on its findings.<sup>3</sup> This report shows that generally, the Act appears to be working well to achieve the purposes for which the legislation was intended.

1.21 Under the Environment and Heritage Legislation Amendment Bill, the same basic framework and general approach would be maintained as currently exists under the Act, whilst at the same time strengthening and/or streamlining the various provisions of the Act which have been shown to need some adjustment.

1.22 The bill aims to make improvements in four distinct areas: streamlining administration of the Act for efficiency and effectiveness, thereby cutting 'red tape' in government; being more strategic and flexible in directing Australian Government action on the environment; strengthening compliance with, and enforcement of, the Act; and implementing a range of minor amendments needed to overcome some technical deficiencies in the Act.<sup>4</sup>

1.23 Therefore, the purpose of the proposed amendments is to greatly improve the operation of existing provisions of the Act.

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2 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 1.

3 Department of the Environment and Heritage, *Operation of the Environment and Protection and Biodiversity Conservation Act 1999*, 6<sup>th</sup> Annual Report 2005–06, p. 1.

4 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 3.

## Outline of the bill

1.24 The Bill consists of two schedules which amend the *Environment Protection and Biodiversity Conservation Act 1999*. Schedule 1 consists of the amendment of Acts, while Schedule 2 contains application, saving and transitional provisions.

1.25 The explanatory memorandum states in its regulation impact statement that the bill addresses the following principal issues through the proposed amendments:

- inefficient, onerous or unnecessary processes with limited environmental outcomes;
- insufficient incentives and statutory constraints on strategic approaches;
- duplicative and inconsistent processes;
- insufficient transparency and risks to the environment;
- insufficient flexibility and scope;
- ambiguities, anomalies or lack of certainty;
- potential for delay or frustration of processes; and
- technical and other issues.<sup>5</sup>

1.26 The explanatory memorandum's impact analysis (costs and benefits) identifies the main groups affected by or having an interest in the problem and its proposed solutions as being;

- companies, partnerships or individuals undertaking development actions or other actions with impacts on the environment;
- Australian Government agencies;
- state and territory governments and local government; and
- environment and heritage groups.<sup>6</sup>

1.27 The impact analysis also outlines beneficial impacts of the proposed amendments to the Act in the following areas:

- referral, assessment and approvals processes;
- protected species provisions;
- fisheries provisions;
- wildlife trade provisions;
- heritage provisions; and

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5 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, pp 3 – 8.

6 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 9.

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- protected areas provisions.<sup>7</sup>

1.28 Additionally, the impact analysis points out that costs associated with the proposed amendments to the Act are generally limited to implementation costs for the Australian Government, and minor costs associated with the need for stakeholders to become familiar with the new arrangements.

1.29 While implementation costs will generally be limited, it should also be noted that transitional costs associated with the amendments may carry through for some time, as efficiencies would not be realised immediately, but would occur as each subsequent issue was dealt with on a case by case basis.<sup>8</sup>

1.30 Items 1 to 835 in Schedule 1 of the bill amend numerous sections of the *Environment Protection and Biodiversity Conservation Act 1999*. Many of these items are of a minor technical nature only, however a number of items may have somewhat more of an impact, and these will be individually identified and discussed later in this report.

1.31 Items 836 to 869 in Schedule 1 amend other related Acts, including the *Australian Heritage Council Act 2003*, the *Environment and Heritage Protection Act (No. 1) 2003*, the *Environment Protection (Alligator Rivers Region) Act 1978*, the *Environment Protection (Sea Dumping Act) 1981*, and the *Migration Act 1958*.

1.32 Items 1 to 58 in Schedule 2 incorporate application, saving and transitional provisions of the bill and make a number of technical amendments to the Act in this regard.

1.33 The Department of the Environment and Heritage has commenced preparations for the implementation of the proposed amendments to the Act, as well as commenced preparation of information products explaining the amendments to external stakeholders. It has been advised that the need to implement the proposed amendments in a number of stages is not necessary, as the majority of the amendments simply involve the refinement of existing provisions.<sup>9</sup>

### **General position on the proposed amendments**

1.34 Submissions to the inquiry were generally supportive of the provisions of the bill to streamline processes and reduce unnecessary administrative burdens under the existing Act.

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7 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, pp 10 – 13.

8 Mr Gerard Early, Department of the Environment and Heritage, Committee Hansard, 6 November 2006, p. 57.

9 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 18.

1.35 While a variety of concerns were raised by witnesses about various aspects of the bill, and these will be discussed later in this report, the committee believes that these concerns must be weighed up against the evidence presented by 6 years of practical application of the existing provisions of the Act which has highlighted areas where the legislation needs a measure of fine tuning.

1.36 The committee generally accepts the Government's rationale and objectives in putting forward this legislation, while noting some areas of concern, as outlined in subsequent chapters of this report.