

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000058

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD)

Topic: Assurance Commissioner

Question Date: 6 May 2021

Question Type: Written

Senator Urquhart asked:

1. Would the Commissioner administer their own budget or would they require the Department Secretary's approval?
2. How would the Commissioner secure the department's cooperation with his or her work?

Answer:

1. Budget 2021-22 includes funding of \$9.0 million over four years from 2021-22 to establish the Environment Assurance Commissioner.

The Environment Assurance Commissioner will be an official of the Department of Agriculture, Water and the Environment (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) for the purposes of the finance law (proposed new subsection 501N(1)). As such, the Commissioner will be responsible for administering their budget.

2. Proposed new section 501T enables the Secretary of the department to make the services of APS employees available for the purpose of assisting the Environment Assurance Commissioner to perform his or her functions. In her second reading speech for the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021, the Minister for the Environment said that the Environment Assurance Commissioner will be housed in the department and will be supported by dedicated resources. This is consistent with the provision of staffing and resources to other statutory office holders under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including but not limited to the Threatened Species Scientific Committee, Indigenous Advisory Committee, and the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

The Environment Assurance Commissioner is also able to request information from the department for the purposes of monitoring and auditing the relevant processes under the EPBC Act (proposed new subsection 501C(4)).

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Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000059

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division

Topic: Government response to Samuel Review

Question Date: 6 May 2021

Question Type: Written

Senator Urquhart asked:

1. At the last estimates, this committee was told that the government had not formed a position on the Samuel Review. When will the government have a position?

[Relevant quote:

Senator RICE: So you can't tell me whether the government agrees with that recommendation?

Mr Knudson: The government has not formed a position on that yet, Senator.[1]] [1] Monday 22 March 2021, Additional Estimates, p.10

2. At the last estimates, the department told the committee that some of the responses to recommendations from the Samuel review will take some time to resolve. How much time will the government need? What kinds of issues was the department referring to?

[Relevant quote:

Mr Knudson: Again, Senator, as I've said a few times now, there will be a staged approach. The government absolutely has all the recommendations and will bring forward its positions as it finalises those positions. But some of those will take quite some time to resolve.]

3. When will the government issue a government response to the Samuel Review?

4. When will it be tabled in the parliament?

Answer:

The Australian Government has committed to delivering reforms needed to improve the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), in a methodical, well planned way. This is consistent with the Independent Review of the EPBC Act, which recommended that this be pursued in staged tranches, taking time to deliver well considered adjustments.

- National Cabinet have agreed the immediate priority is to implement single touch environmental approvals underpinned by national environmental standards and supported by strong assurance.
- Further phases of reform will build on these streamlining efforts to address further changes and improvements, including to national environmental standards, taking into account the recommendations of the EPBC Act review.

The government has committed to working with stakeholders through the full details of the recommendations of the Review. The Minister for the Environment undertook to provide a timeline for subsequent phases of reform at the Environment Minister's meeting on 15 April 2021.

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Answers to questions on notice
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Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000060

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD)

Topic: Cost burden to states

Question Date: 6 May 2021

Question Type: Written

Senator Urquhart asked:

1. Has the Department done any modelling or analysis on what resources will be needed for jurisdictions to implement EPBC Act requirements? Can you please table that.
2. What percentage of the Commonwealth's current regulatory workload would potentially be deferred to the states and territories under approval bilateral agreements?
3. Can the department provide the current number of projects being assessed under bilateral agreements or accredited processes under the EPBC Act?
4. Can the Department provide the current number of Commonwealth agency referrals or actions on Commonwealth land or sea being assessed under EPBC?

Answer:

1. The Department of Agriculture, Water and the Environment has not undertaken any modelling or analysis on the resource requirements of the states and territories under single touch approval arrangements. Any need for resources will be considered as part of ongoing negotiations.
2. It is not possible at this stage to determine what percentage of the Commonwealth's regulatory workload would be deferred to the states and territories. This is because the coverage of single touch arrangements is dependent on the particular authorisation processes put forward by states and territories and whether they are able to be accredited. The Commonwealth is working with the states and territories to maximise the coverage achieved by the agreements.
3. As at 1 April 2021, the department was assessing 192 projects under assessment bilateral agreements or accredited processes under the EPBC Act.
4. As at 1 April 2021, there were 112 active commonwealth agency referrals or actions involving commonwealth land or sea under the EPBC Act. Of these actions, 16 are being taken on Commonwealth land or a Commonwealth marine area, or are actions of a Commonwealth agency.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000061

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD)

Topic: Changes made to the standards from the meeting of the roundtable in January

Hansard Page: 71

Question Date: 4 May 2021

Question Type: Spoken

Senator Hanson-Young asked:

Senator HANSON-YOUNG: Were any changes made to the standards from the meeting of the roundtable in January in what has now been published as the final draft?

Mr Manning: I think there were some minor changes made in the period. As Mr Tregurtha said, they were sent to the states, there was that roundtable, and then there were some minor tweaks made before they became the final interim standards the minister has provided.

Senator HANSON-YOUNG: And what were those tweaks?

Mr Manning: I will go back to the national cabinet decision on 11 December, where the Prime Minister in particular suggested that we should codify the EPBC Act as a first step. So, really, the changes that were made were to make sure we had done that job appropriately and had codified it accurately.

Senator HANSON-YOUNG: I'd like a marked up copy with the changes. That would make it very clearly for everybody what the changes are.

Mr Tregurtha: We're very happy to take that notice.

Answer:

A marked up copy of the changes made by the Department of Agriculture, Water and the Environment to the draft National Environmental Standard for matters of national environmental significance (as provided to the meeting of the roundtable in January and provided to the states and territories on 15 January 2021) to the final draft published on the department's website on 29 April 2021 is at **Attachment A**.



National Environmental ~~Standards for Standard~~ (Matters of National Environmental Significance) 2021

I, Sussan Ley, Minister for the Environment, make the Instrument as follows:

1. The Instrument is the *National Environmental Standard (Matters of National Environmental Significance) 2021*.
2. The Instrument will commence on the day after the end of the period of 1 month beginning on the day on which the Instrument is made.
3. The Instrument is made under [section 65C] of the Act.
4. Unless otherwise stated, expressions used in the Instrument have the same meaning as in the Act.
5. The National Environmental Standard (Matters of National Environmental Significance), and the outcome that the application of the Standard is to achieve, is set out in the Schedule.
6. For the purposes of the *Acts Interpretation Act 1901*, as a contrary intention available under section 2(2), and for the purposes of section 13(1), the material included under the heading Further information in the Schedule does not form part of the Instrument. This contrary intention is only for the purposes of the material included under the heading Further information.
7. [Section 65G] of the Act requires the Minister to cause reviews to be undertaken of each national environmental standard as follows:
 - (a) the first review must be undertaken within 2 years of the standard commencing; and
 - (b) later reviews must be undertaken at intervals of not more than 5 years.

Dated

Sussan Ley **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for the Environment

Schedule—National Environmental Standard (Matters of National Environmental Significance)

Part 1 – Standard for all matters of national environmental significance

Element	Description
Environmental Outcome	<p>Matters of national environmental significance are protected to support the sustainable, long-term conservation of Australia's unique biodiversity and heritage and the important social, economic, cultural and environmental benefits it provides.</p>
National Standard	<p>Decisions (or other things)<u>Bilateral agreements</u> relevant to matters of national environmental significance (MNES):</p> <p>1) Accord with the objects of the EPBC Act.</p> <p><u>Bilateral agreements and arrangements and processes:</u></p> <p>2) <u>Promote management of protected areas in accordance with the management principles adopted under the EPBC Act.</u></p> <p><u>Environmental assessment and approval decisions relevant to MNES:</u></p> <p>2)3) Take into account the principles of ecologically sustainable development (including the precautionary principle).</p> <p><u>Bilateral agreements, arrangements and processes, and environmental assessment and approval decisions relevant to MNES:</u></p> <p>3)4) Are not inconsistent with relevant international agreements.</p> <p>4)5) Are not inconsistent with any relevant management plans, threat abatement plans or recovery plans, and have regard to any approved conservation advice where relevant.</p> <p><u>Environmental assessment and approval decisions and arrangements and processes:</u></p> <p>5)1) <u>Promote management of protected areas in accordance with the management principles adopted under the EPBC Act.</u></p> <p>6) Provide adequate opportunity for the engagement and input of governments, the community, land-holders and Indigenous Australians, consistent with the EPBC Act.</p> <p>7) Demonstrate compliance with the EPBC Act and EPBC Regulations, or relevant bilaterally accredited management arrangement or authorisation process.</p> <p><u>Environmental assessment and approval decisions relevant to matters of national environmental significance (MNES):</u></p> <p>8) Are subject to adequate assessment of the impacts that the action or actions have or will have, or are likely to have on matters of national environmental significance, including:</p> <p>a) assessment based on adequate information about relevant impacts of all relevant components of the action on matters of national environmental significance to enable an informed</p>

Element	Description
	<p>assessment and decision on whether or not to approve the action</p> <p>b) public comment, including provisions for particular needs groups</p> <p>c) transparent and accessible publication of assessment documentation</p> <p>d) where relevant, advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, and</p> <p>e) conditions of approval where these are necessary or convenient to protect a matter of national environmental significance, or repair or mitigate damage to a matter of national environmental significance for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action).</p> <p>9) Will not have unacceptable or unsustainable impacts on MNES.</p> <p>10)9) Seek to minimise harm to MNES, taking into account all reasonably practicable measures to avoid and then to mitigate significant impacts, and then lastly apply appropriate offsets.</p> <p>11)10) Consider, in so far as they are not inconsistent with any other requirement of the EPBC Act:</p> <p>a) matters relevant to any MNES to which the assessment and approval relates, and</p> <p>b) economic and social matters.</p> <p>Arrangements and processes:</p> <p>12)11) Will not have unacceptable or unsustainable impacts on MNES.</p>
Further information	<p>EPBC Act policies and guidelines</p> <p>Engage Early—Guidance for proponents on best practice Indigenous engagement for environmental assessments under the EPBC Act</p>
Review	<p>This National Environmental Standard must be reviewed within 2 years of commencement, and thereafter at intervals of not more than 5 years. A written report of the review must be provided to the Minister. The Minister must cause a copy of the report to be published as soon as practicable after the report is given to the Minister.</p>

This Standard should be applied in conjunction with all other relevant National Environmental Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

Impacts: defined at section 527E of the EPBC Act.

Objects of the EPBC Act: defined at section 3 of the EPBC Act.

Offset: The use of environmental offsets is consistent with section 134(3) of the EPBC Act and Schedule 2(6) of the EPBC Regulations, and reflects Australia's international commitments under Section 1(a) of Article 14 (Impact Assessment and Minimizing Adverse Impacts) of the Convention on Biological Diversity. Further information is provided in the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time).

Principles of ecologically sustainable development (including the **precautionary principle**): defined at section 3A of the EPBC Act.

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).

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Significant impact: Sections 12-24E of the EPBC Act prohibit a person from taking an action that has, will have or is likely to have a significant impact on a matter of national environmental significance, unless the action is approved or otherwise exempt from the need for approval. See the *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013, as updated from time to time) for more information about assessing the significance of impacts on matters of national environmental significance. Note also that 'Impact' is defined at section 527E of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Unacceptable or unsustainable impacts: Section 46(3)(c) of the EPBC Act requires that actions approved under a bilateral agreement not have unacceptable or unsustainable impacts on relevant MNES. ~~Section 74B of the EPBC Act prohibits a person from taking an action that the Minister considers is clearly unacceptable. Section 133(7) of the EPBC Act enables the Minister to refuse to approve the taking of an action, based on an assessment of the impacts of the action on relevant MNES.~~ Examples of what may constitute an unacceptable or unsustainable impact are set out in section 59 of the EPBC Act and include:

- (a) The approval of an action that is not consistent with the protection, conservation and presentation of the world heritage values of a declared world heritage property;
- (b) The approval of an action that has a significant adverse impact on the ecological character of a declared Ramsar wetland;
- (c) The approval of an action that would cause a listed threatened species to become more threatened.

Matter-specific Standards

Part 2 – World Heritage

World Heritage properties are cultural and/or natural heritage places considered to have Outstanding Universal Value by the international community. They are properties inscribed on the UNESCO World Heritage List that Australia has committed to protect under the World Heritage Convention for present and future generations.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on the World Heritage values of a declared World Heritage property, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The Outstanding Universal Value of World Heritage properties are identified, protected, conserved, presented and transmitted to future generations.
National Standard	<p>Decisions (or other things) <u>Environment assessment and approval decisions, bilateral agreements and arrangements and processes</u> that relate to World Heritage properties:</p> <p>1) Are not inconsistent with Australia's obligations under the World Heritage Convention.</p> <p><u>Bilateral agreements and arrangements and processes that relate to World Heritage Properties</u>:</p> <p>2) Promote the management of World Heritage properties Properties in accordance with the Australian World Heritage Management Principles, including:</p> <ul style="list-style-type: none">a) management planning for each World Heritage propertyb) monitor and report on the state of the World Heritage values of each World Heritage propertyc) provide for public consultation, including with people or groups having a special interest in the property or place, or likely to be especially affected by a decision or thing relating to the World Heritage propertyd) <u>in undertaking an</u> assessment of actions that are likely to have a significant impact on the World Heritage values of a World Heritage property (whether the action is to occur inside the property or not), including: <ul style="list-style-type: none">i) the assessment process should identify and examine how the World Heritage values of the property are likely to be affected by the actionii) an action should not be approved if it would be inconsistent with the protection, conservation, presentation or transmission to future generations of the World Heritage values of a World Heritage propertyiii) approval of an action should be subject to conditions that are necessary to ensure protection, conservation, presentation or transmission to future generations of the World Heritage values of a World Heritage property, and

Element	Description
	<p>iv) the action should be monitored by the authority responsible for giving the approval (or another appropriate authority) and, if necessary, enforcement action should be taken to ensure compliance with the conditions of the approval.</p> <p><u>Environment assessment and approval decisions that relate to World Heritage properties:</u></p> <p>3) <u>Are not inconsistent with:</u></p> <p>a) <u>the Australian World Heritage Management Principles, including the matters specified in paragraphs (2)(a) – (d), or</u></p> <p>e)b) <u>a management plan for the World Heritage property made in accordance with the EPBC Act.</u></p> <p><u>Requirements of the Commonwealth or a Commonwealth agency:</u></p> <p>3)4) The Commonwealth or a Commonwealth agency must not:</p> <p>a) contravene a plan made for a World Heritage property that is entirely within one or more Commonwealth areas, or</p> <p>b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene a plan made for a World Heritage property that is entirely within one or more Commonwealth areas.</p>
Further Information	<p>General information about Australia's listed heritage places</p> <p>Australian Heritage Database</p> <p>UNESCO World Heritage List – Australian properties</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

Outstanding Universal Value: Outstanding Universal Value should be understood in accordance with paragraphs 49-53 and 77-78 of the UNESCO *World Heritage Operational Guidelines* (2019, as updated from time to time), and includes the criteria under which the property is inscribed on the World Heritage List, the statements of authenticity and/or integrity, and the statement of protection and management. These may include natural, human or cultural values related to listed property.

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).

Things: ~~means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

World Heritage Convention: means the Convention for the Protection of the World Cultural and Natural Heritage. Australia ratified the World Heritage Convention in August 1974. Signatories to the convention agreed to take effective and active measures for the protection, conservation and presentation of the cultural and natural heritage.

World Heritage Management Principles: defined in regulation 10.01 of the EPBC Regulations.

World Heritage property: defined at section 13 of the EPBC Act. Includes the areas within the boundary of the listed property. Where properties have a buffer zone these zones should be taken into account.

World Heritage Values: defined at section 12(3) of the EPBC Act.

Part 3 – National Heritage

National Heritage places comprise natural, historic and Indigenous places of outstanding heritage significance to Australia. National Heritage places support Australia's commitments under international conventions.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The National Heritage values of Australia's National Heritage places are identified, protected, conserved, presented and transmitted to future generations.
National Standard	<p>Decisions (or other things) <u>Bilateral agreements and arrangements and processes</u> that relate to National Heritage places:</p> <ol style="list-style-type: none"> 1) Promote the management of National Heritage places in accordance with the National Heritage Management Principles, including: <ol style="list-style-type: none"> a) management planning for National Heritage places b) monitor and report on the state of the National Heritage values of each National Heritage placesplace c) provide for public consultation, including with people or groups having a special interest in the property or place, or likely to be especially affected by a decision or thing relating to the National Heritage place, and d) support the active participation of indigenous people in identification, assessment and management and effective protection of indigenous heritage values associated with National Heritage places. <p><u>Environmental assessment and approval decisions that relate to National Heritage places:</u></p> <ol style="list-style-type: none"> 2) <u>Are not inconsistent with-</u>: <ol style="list-style-type: none"> a) <u>the National Heritage Management Principles, including the matters specified in paragraphs (1)(a) – (d)</u> e) <u>b) a management plan for the National Heritage place made in accordance with the EPBC Act, or</u> c) <u>an agreement to which the Commonwealth is a party to in relation to a National Heritage place.</u> <p><u>Requirements for the Commonwealth or a Commonwealth agency:</u></p> <ol style="list-style-type: none"> 2) <u>3) The Commonwealth or a Commonwealth agency must not:</u> <ol style="list-style-type: none"> a) contravene a plan made for a National Heritage place that is entirely within one or more Commonwealth areas, or b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene a plan made for a National Heritage place that is entirely within one or more Commonwealth areas.

Element	Description
Further Information	Australian Heritage Database General information about Australia's listed heritage places

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

National Heritage place: defined at section 324C(3) of the EPBC Act. Includes the areas within the boundary of the listed place.

National Heritage Management Principles: defined in regulation 10.01E of the EPBC Regulations.

National Heritage values: defined at section 324D of the EPBC Act. Identified in the gazetted National Heritage listing instrument and are published on the Australian Heritage Database. These may include natural, human or cultural values related to listed place.

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).-

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Part 4 – Wetlands of International Importance (Ramsar wetlands)

Wetlands of international importance are globally recognised important wetlands and listed under the Convention on Wetlands of International Importance (Ramsar Convention) or declared by the Minister to be a declared Ramsar wetland under section 16 of the EPBC Act.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on the ecological character of a declared Ramsar wetland, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The ecological character of each Ramsar wetland of international importance is maintained through the conservation, management and wise use of the wetland, having regard to ecologically sustainable development.
National Standard	<p>Decisions (or other things) <u>Environmental assessment and approval decisions, bilateral agreements and arrangements and processes</u> that relate to Ramsar wetlands:</p> <p>1) Are not inconsistent with Australia's obligations under the Ramsar Convention.</p> <p><u>Bilateral agreements and arrangements and processes that relate to Ramsar wetlands</u>:</p> <p>2) Promote the management of the Ramsar wetland in accordance with the Australian Ramsar Management Principles, including:</p> <ul style="list-style-type: none"> a) management planning for each Ramsar wetland b) monitor and report on the state of the ecological character of each Ramsar wetland c) provide for public consultation, including with people or groups having a special interest in the property or place, or likely to be especially affected by a decision or thing relating to the Ramsar wetland d) <u>in undertaking an</u> assessment of actions that are likely to have a significant impact on the ecological character of each Ramsar wetland (whether the action is to occur inside the wetland or not); including: i) the assessment process should identify and examine how the ecological character of the Ramsar wetland is likely to be affected by the action ii) an action should not be approved if it would be inconsistent with maintaining the ecological character of the Ramsar wetland or providing for the conservation and sustainable use of the wetland iii) approval of the action should be subject to conditions, if necessary, to ensure that the ecological character of the Ramsar wetland is maintained, and iv) the action should be monitored by the authority responsible for giving the approval (or another appropriate authority) and, if necessary, enforcement action should be taken to ensure compliance with the conditions of the approval. <p><u>Environmental assessment and approval decisions that relate to Ramsar wetlands</u>:</p>

Element	Description
	<p><u>3) Are not inconsistent with the Australian Ramsar Management Principles, including the matters specified in paragraphs 2(a) – (d).</u></p> <p><u>Requirements for the Commonwealth or a Commonwealth agency:</u></p> <p><u>3)4) The Commonwealth or a Commonwealth agency must not:</u></p> <ul style="list-style-type: none"> a) contravene a plan made for a Ramsar wetland that is entirely within one or more Commonwealth areas, or b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene a plan made for a Ramsar wetland that is entirely within one or more Commonwealth areas.
Further Information	<p>General wetlands information</p> <p>Australian wetlands database - information about Australia's Ramsar wetlands, including location and boundary maps, Ramsar Information Sheets and Ecological Character Descriptions.</p> <p>Australian National Guidelines for Ramsar Wetlands</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

Australian Ramsar Management Principles: defined in regulation 10.02 of the EPBC Regulations.

Ecological character: the combination of the ecosystem components, processes and benefits/services that characterise a wetland at a given point in time (as per Ramsar Resolution IX.1 Annex A para 15). The ecological character of each Australian Ramsar wetland is as described in its Ramsar Information Sheet and Ecological Character Description.

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).

Ramsar Convention: means the Convention on Wetlands of International Importance especially as Waterfowl Habitat, as entered into force in Australia on 21 December 1975. Signatories to the convention agreed to halt and, where possible, reverse, the worldwide loss of wetlands and to conserve those that remain through wise use and management.

Ramsar wetland(s): defined at section 17 of the EPBC Act. Includes the areas within the boundary of the listed wetland, and its buffer zone (as relevant). The Australian wetlands database provides information about location and boundaries of Australia's Ramsar wetlands. Some Ramsar wetlands have catchments that cross state or territory borders. Catchment mapping is available.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Part 5 – Threatened Species and Ecological Communities

Threatened species and ecological communities are listed under section 178 of the EPBC Act, following a scientific assessment of their threat status against a set of criteria in the EPBC Act. The Australian Government and all states and territories are cooperating to implement a common assessment method for the assessment and listing of threatened species.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on a listed threatened species or listed threatened ecological community, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	Threatened species and ecological communities are protected, conserved, managed and recovered over time.
National Standard	<p>Decisions (or other things) <u>Environmental assessment and approval decisions, bilateral agreements and arrangements and processes</u> that relate to threatened species and ecological communities:</p> <ol style="list-style-type: none"> 1) Are not inconsistent with Australia's obligations under: <ol style="list-style-type: none"> a) the Convention on Biological Diversity b) the Apia Convention, or c) Convention on International Trade in Endangered Species of Wild Fauna and Flora. 2) <u>Are not inconsistent with any recovery plan for the threatened species or community or a threat abatement plan.</u> <p><u>Bilateral agreements and arrangements and processes that relate to threatened species and ecological communities must:</u></p> <ol style="list-style-type: none"> 2)3) Promote the survival and/or enhance the conservation status of threatened species and ecological communities. <p><u>Environmental assessment and approval decisions, and decisions to enter a bilateral agreement or accredit an arrangement or process that relate to threatened species and ecological communities must:</u></p> <ol style="list-style-type: none"> 3)4) Have regard to relevant conservation advices. <p><u>Requirements for Commonwealth agencies:</u></p> <ol style="list-style-type: none"> 4)1) Are not inconsistent with any recovery plan for the threatened species or community or a threat abatement plan. 5) A Commonwealth agency must not take any action that contravenes a recovery plan or a threat abatement plan. <p><u>Requirements</u> <u>Permit requirements</u> in Commonwealth areas:</p> <ol style="list-style-type: none"> 6) Do not kill, injure, take, trade, keep or move a listed threatened species or ecological community, or knowingly damage critical habitat, except where a permit is issued or exemption applies.

Element	Description
Further Information	<p>The Species Profiles and Threats (SPRAT) database contains links to recovery plans and conservation advices as well as an interactive map showing the species modelled habitat and other important information sources like listing advices and threat abatement plans.</p> <p>EPBC Act policies and guidelines relating to threatened species and ecological communities.</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

Critical habitat: defined at section 207A of the EPBC Act.

Conservation advice: an approved conservation advice is a document prepared in accordance with section 266B(2) of the EPBC Act.

Permit: a permit required under Part 13 of the EPBC Act. Exemptions are provided under section 197 of the EPBC Act.

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).

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Recovery plan: a plan made or adopted under section 269A of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Threat Abatement Plan: a plan made or adopted under section 270B of the EPBC Act.

Threatened species and ecological community: a species or community included in the list referred to at section 178 or 181 and subject to sections 18 or 18A of the EPBC Act.

Part 6 – Migratory Species

Migratory species are listed under section 209 of the EPBC Act and reflect those listed on international agreements to which Australia is a party. Examples of migratory species are species of birds (e.g. albatrosses and petrels), mammals (e.g. whales) or reptiles (e.g. marine turtles).

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on a listed migratory species, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	Migratory species are protected, conserved and managed within Australia.
National Standard	<p>Decisions (or other things) <u>Environmental assessment and approval decisions, bilateral agreements, and arrangements and processes</u> that relate to migratory species:</p> <ol style="list-style-type: none"> Are not inconsistent with Australia's obligations under whichever of the following conventions or agreements the migratory species is listed: <ol style="list-style-type: none"> the Bonn Convention CAMBA JAMBA, or an international agreement approved under the EPBC Act. <p><u>Bilateral agreements and arrangements and processes that relate to migratory species must:</u></p> <ol style="list-style-type: none"> Promote the survival and/or enhance the conservation status of each migratory species. <p><u>Requirements for Commonwealth agencies:</u></p> <ol style="list-style-type: none"> A Commonwealth agency must: <ol style="list-style-type: none"> not take any action that contravenes a threat abatement plan, and take all reasonable steps to act in accordance with a wildlife conservation plan. <p>Requirements <u>Permit requirements</u> in Commonwealth areas:</p> <ol style="list-style-type: none"> Do not kill, injure, take, trade, keep or move a listed migratory species in a Commonwealth Area, except where a permit is issued or exemption applies.
Further Information	<p>See also:</p> <p>The Species Profiles and Threats (SPRAT) database contains links to wildlife conservation plans and as well as an interactive map showing the species modelled habitat and other important information sources like listing advices, threat abatement plans</p> <p>EPBC Act policies and guidelines relating to migratory species.</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Arrangements and processes: means a state or territory management arrangement or authorisation process proposed for accreditation for the purposes of a bilateral agreement.

International agreement: an international agreement entered into by the Government of Australia relating to migratory birds, and made under the EPBC Act. Australia has entered into such agreements with the China (CAMBA), Japan (JAMBA) and the Republic of Korea (ROKAMBA). Further information is available at: www.environment.gov.au.

Migratory species: a species included in the list referred to at section 209 of the EPBC Act.

Permit: a permit required under Part 13 of the EPBC Act. Exemptions are provided under section 212 and 231 of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Promote: has the same meaning as in the EPBC Act, where the term is given its ordinary meaning, including but not limited to it having an identifiable positive outcome on the matter to be promoted. Whether or not something is promoted will be determined with reference to the relevant sections of the Act, for example the management of a property in accordance with the Australian World Heritage Management Principles (section 34B) or the conservation status of a threatened species or ecological community (section 53).

Threat abatement plan: a plan made or adopted under section 270B of the EPBC Act.

Wildlife conservation plan: a plan made or adopted under section 285 of the EPBC Act.

Part 7 – Commonwealth Marine Environment

The Commonwealth marine area is any part of the sea, including the waters, seabed, and airspace, within Australia's exclusive economic zone and/or over the continental shelf of Australia, that is not state or Northern Territory waters. The Commonwealth marine area stretches from 3 up to 200 nautical miles from the coast. The Commonwealth marine area includes most of Australia's oceans. The EPBC Act protects 'the environment' of the Commonwealth marine area.

Australia has declared a number of Commonwealth reserves in the Commonwealth marine area. These are commonly known as Australian Marine Parks.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on the environment of the Commonwealth marine area, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The environment of Commonwealth marine areas is protected and sustainably managed.
National Standard	<p>Decisions (or other things) <u>Environmental assessment and approval decisions</u> that relate to the Commonwealth marine area:</p> <ol style="list-style-type: none"> 1) Have regard to relevant marine bioregional plans. <p>Requirements in declared Commonwealth marine reserves:</p> <ol style="list-style-type: none"> 2) Manage Commonwealth marine reserves in accordance with the Australian IUCN Reserve Management Principles relevant to each reserve or zone, including: <ol style="list-style-type: none"> a) transparent, effective and adaptive management planning for Commonwealth marine reserves b) broad and meaningful participation by the community, public organisations and private interests in designing and carrying out the functions of the reserve or zone c) if resource use is consistent with the management principles that apply to a reserve or zone, it should be based on the principles of ecologically sustainable use, and d) joint management, where the reserve is wholly or partly owned with Indigenous Australians. <p><u>Requirements for the Commonwealth or a Commonwealth agency:</u></p> <ol style="list-style-type: none"> 3) The Commonwealth or a Commonwealth agency must: <ol style="list-style-type: none"> a) <u>where the agency is the Director of National Parks -</u> manage a Commonwealth marine reserve to give effect to a marine park management plan for the reserve, and b) not perform its functions or exercise its powers in relation to a Commonwealth marine reserve inconsistently with a marine park management plan that is in operation for the reserve. <p>Requirements <u>Permit requirements</u> in Commonwealth areas:</p>

Element	Description
	<p>4) Do not kill, injure, take, trade, keep or move a marine species, except where a permit is issued or exemption applies.</p> <p>RequirementsPermit requirements for cetaceans in the Australian Whale Sanctuary or prescribed waters:</p> <p>5) Do not kill, injure, take, trade (acquire or dispose of through sale, agreement or barter etc), keep, move, interfere with (harass, chase, herd, tag, mark or brand), treat (divide or cut up, or extract any product from the cetacean) or possess a cetacean, except where a permit is issued or exemption applies.</p>
Further Information	<p>Australian Marine Parks</p> <p>Marine park management plans</p> <p>Marine Bioregional Plans</p> <p>Commonwealth fisheries harvest strategy policy and guidelines</p> <p>Commonwealth Bycatch strategy</p> <p>Guidelines for the Ecologically Sustainable Management of Fisheries (2007, as updated from time to time)</p> <p>EPBC Act Policy Statement 2.1 - Interaction between offshore seismic exploration and whales: Industry guidelines</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Australian Whale Sanctuary: defined at section 225 of the EPBC Act.

Commonwealth marine area: defined at section 24 of the EPBC Act.

Commonwealth marine reserve: an area of sea in the Commonwealth marine area declared under section 344 of the EPBC Act to be a Commonwealth reserve, commonly known as Australian Marine Parks.

Marine bioregional plans: section 176 of the EPBC Act provides for the making of bioregional plans. The Minister must have regard to bioregional plans in making any decision under the EPBC Act to which the plans are relevant. Marine bioregional plans have been developed for four of Australia's marine regions.

Marine park management plans: section 366 of the EPBC Act requires that Commonwealth reserves must have management plans in place as soon as practicable after being proclaimed. Section 367 requires that management plans must provide for the protection and conservation of the reserves.

Marine species: a species included in the list referred to at section 248 of the EPBC Act.

Permit: a permit required under Part 13 of the EPBC Act. Exemptions are provided under section 255 (for marine species) and section 231 (for cetaceans) of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Part 8 – Great Barrier Reef Marine Park

The Great Barrier Reef Marine Park is both a substantial part of a World Heritage area and a separate matter of national environmental significance. The Great Barrier Reef Marine Park Authority manages the Great Barrier Reef Marine Park in accordance with *Great Barrier Reef Marine Park Act 1975*.

The EPBC Act prohibits a person from taking an action that has, will have or is likely to have a significant impact on the environment of the Great Barrier Reef Marine Park, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The environment, biodiversity and heritage values of the Great Barrier Reef Marine Park are protected and conserved for current and future generations.
National Standard	<p>Decisions (or other things) <u>Environmental assessment and approval decisions</u> that relate to the Great Barrier Reef Marine Park:</p> <ol style="list-style-type: none"> Are <u>Actions do not require approval if the action is</u> taken in accordance with the zoning plan for the relevant zone made under the <i>Great Barrier Reef Marine Park Act 1975</i>. Should promote an efficient and cooperative approach to decision-making with the Great Barrier Reef Marine Park Authority.
Further Information	<p>World Heritage values of the Great Barrier Reef Australian Heritage Database EPBC Act Referral Guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area The Retrospective Statement of Outstanding Universal Value for the Great Barrier Reef</p> <p>Fisheries Guidelines for the Ecologically Sustainable Management of Fisheries Commonwealth fisheries harvest strategy policy and guidelines Commonwealth Bycatch strategy</p> <p>Reef Management Great Barrier Reef Marine Park Zoning Plan 2003 Great Barrier Reef Intergovernmental Agreement 2015 Reef 2050 Long-Term Sustainability Plan (2018, as updated from time to time) Strategic Assessment for the Great Barrier Reef 2014</p> <p>Additional policies, plans and position statements are available at: www.environment.gov.au and www.gbrmpa.gov.au.</p>

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Great Barrier Reef Marine Park: means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park Authority: means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Zoning plan: a plan prepared under Division 2 of the *Great Barrier Reef Marine Park Act 1975*, and referred to under section 43 of the EPBC Act.

Part 9 – Protection of the Environment from Nuclear Actions

The EPBC Act protects the whole of the environment from impacts of nuclear actions.

The EPBC Act prohibits a person from taking a nuclear action that has, will have or is likely to have a significant impact on the environment, unless the action is approved or otherwise exempt from the need for approval.

Element	Description
Environmental Outcome	The community and the environment are protected from the harmful effects of radiation and radioactive material that may result from nuclear actions .
National Standard	<p>Decisions (or other things)<u>Environmental assessment and approval decisions</u> that relate to nuclear actions:</p> <ol style="list-style-type: none">1) Must not approve or enable the taking of an action (or a class of actions) that involves the construction or operation of, any of the following nuclear installations:<ol style="list-style-type: none">a) a nuclear fuel fabrication plantb) a nuclear power plantc) an enrichment plant, ord) a reprocessing facility. <p>The Commonwealth must<u>Decisions relating to the entry into bilateral agreements containing a provision relating to nuclear actions:</u></p> <ol style="list-style-type: none">2) <u>Must</u> not have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of a nuclear action:<ol style="list-style-type: none">a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States, orb) by a constitutional corporation.
Further Information	The Australian Radiation Protection and Nuclear Safety Agency (<u>ARPANSA</u>) also regulates radiation and nuclear activities.

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Nuclear actions: defined at section 22 of the EPBC Act.

Nuclear installations: defined at section 22 of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Part 10 – Protection of Water Resources from Coal Seam Gas Development and Large Coal Mining Development

The EPBC Act prohibits a person from taking an action that involves coal seam gas development or large coal mining development and has, will have or is likely to have a significant impact on a water resource, unless the action is approved or otherwise exempt from the need for approval.

The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) is established under section 505C of the EPBC Act to provide independent scientific advice to the Australian Government Environment Minister and relevant state ministers on the potential water-related impacts of proposed coal seam gas or large coal mining developments.

Element	Description
Environmental Outcome	Protection of a water resource , which is or is likely to be significantly impacted by coal seam gas or large coal mining developments , including any impacts of associated salt production and/or salinity.
National Standard	Decisions (or other things) Environmental assessment and approval decisions that relate to coal seam gas and large coal mining developments that impact on water resources : 1) Obtain and take into account the independent expert scientific advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.
Further Information	IESC Information Guidelines, Explanatory Notes and Fact Sheets, available at: www.iesc.environment.gov.au .

This Standard should be applied in conjunction with the Standard for all MNES and other relevant matter-specific Standards.

Definitions:

Coal seam gas or large coal mining developments: defined at section 528 of the EPBC Act.

~~**Things:** means the exercise of functions and powers relating to the EPBC Act or an accredited process (for example, entry into bilateral agreements (section 45) or the entry into a strategic assessment agreement (section 146)).~~

Water resource(s): has the same meaning as in the *Water Act 2007*:

- surface water or ground water; or
- a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000062

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD) G5

Topic: Differences between the Samuel standards and the final draft standards

Hansard Page: 75

Question Date: 4 May 2021

Question Type: Spoken

Senator Green asked:

Senator GREEN: Okay. So many people put so much time into the Samuel review. Can I just say that as a comment. We are going to ask those people to put together the hours of work that they put in to preparing submissions to the Samuel review, and now it's being pushed off again. Can I ask about the standards that the Samuel review did propose. There are obviously differences between what the government's proposing and what the Samuel standards were, and I just want to look at those differences. In terms of the threatened species and ecological communities, can you explain what the differences are between the Samuel standards and what the minister has put forward and why there's a difference? What's the need to have that difference?

Mr Manning: I'm not sure that I could, on the spot do that compare and contrast in an accurate way. I would probably need to go and get the two documents before me, but I would be happy to take that on notice, unless one of my colleagues can answer that more directly here and now.

Answer:

In December 2020, National Cabinet agreed that the first standard for matters of national environmental significance (MNES) must reflect the current requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The final draft National Environmental Standard for MNES fully and accurately reflects the specific requirements of the EPBC Act, consistent with the National Cabinet's decision.

The Review's recommended National Environmental Standards for MNES, while consistent with the objects of the EPBC Act, include references to guidelines, policy statements and management plans which, in some cases, extend beyond the Act's specific requirements.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000063

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD)

Topic: Sunset clause

Hansard Page: 77-78

Question Date: 4 May 2021

Question Type: Spoken

Senator Fawcett asked:

CHAIR: The concern expressed by some stakeholders that are witnesses to this inquiry is that the interim standards are process based standards which are drawn from the EPBC Act in its current form, and that was a decision of national cabinet, so I understand that. But the concern is that a review may endorse those as the permanent standards, whereas what we have seen, almost uniquely I think, is a unity ticket from both environmental groups, academics and industry groups who've said we need to move to the outcome based standards that were envisaged by Professor Samuel. To give stakeholders writ large confidence that the permanent standards will be reflecting the outcome based approach, what would prevent the bill including a sunset clause that the interim standards, which are process based, will cease to have effect at the end of that two-year period such that it would have to be an advertent decision of the parliament to extend them as opposed to something that could just be an outcome of a review?

Mr Manning: I don't know that a sunset clause is something that we have contemplated or turned our minds to at this particular stage. It's possible to do that and consult with the government and the minister about it, but the initial reaction may well produce some uncertainty. In a space where we're working to have single touch approvals with the states and territories—and they're making commitments to a set of standards on what that would mean—it would likely introduce some uncertainty to have the possibility that that just lapses and that architecture just lapses at a particular point in time. But I think we'd have to take that on notice and think about it a little further. We haven't turned our mind to that possible clause.

CHAIR: I'd invite you to take that on notice.

Answer:

The Department of Agriculture, Water and the Environment is considering the potential implications of incorporating a sunset clause for national environmental standards in the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000064

Hearing Date: 4 May 2021

Division/Agency: Environment Approvals Division (EAD)

Topic: Offset process - Western Sydney airport

Hansard Page: 79

Question Date: 4 May 2021

Question Type: Spoken

Senator Hanson-Young asked:

Senator HANSON-YOUNG: Are you aware of the criticisms in recent weeks of corruption in the offset process?

Mr Manning: No, I'm—

Mr Tregurtha: I'm broadly aware of that, Senator, but only in so far as, I think, that ranges across a range of jurisdictions.

Senator HANSON-YOUNG: Yes, including New South Wales in particular. You would be aware, then, that there are serious questions being asked in relation to offsets with the Western Sydney Airport?

Mr Tregurtha: I'm aware of that.

Senator HANSON-YOUNG: Have you had to brief the minister about this matter at all?

Mr Tregurtha: As Mr Manning has pointed out, our colleagues in our environmental assessments and approvals area hold responsibility for individual project approvals. They're not with us today, but I'm very happy to take on notice that particular question.

Senator HANSON-YOUNG: The New South Wales airport offset credits were purchased by the federal infrastructure department. I understand that's a different department. However, it is the environment department that has responsibility for the sign-off of the offset planned for the airport, isn't it?

Mr Tregurtha: Again, I'd have to turn my mind specifically to the particular approval process as to whether or not the minister or the department, under delegation, undertook that particular approval decision—and, indeed, to the conditions attached to that approval decision—in order to be accurate in relation to how we reflected the outcome of that decision. As Mr Manning has just reminded me, the other potentially relevant part of the EPBC Act here is in relation to advice we provide to other agencies under section 160, although from memory I do think that the Western Sydney airport fell outside that particular provision. That would be something that I'd need to take on notice.

Senator HANSON-YOUNG: Could you take it on notice? I'd really like to know who signed off on the offset plan—the title of the person—whether it went to a minister, which minister it went to and when that happened.

Mr Tregurtha: We're happy to take that on notice, but it depends on whether we're talking about the approval itself. We have a post-approval function within the department where, once we have made an approval decision, there's a set of conditions, some of which require post-approval action. Mr Manning used to run that particular part of the department. In terms of the specific plan that you're referring to, I'd like to take that on notice to ensure that we provide you with accurate advice.

Senator HANSON-YOUNG: Thank you. Just so I'm clear, sometimes an approval for an action can be done, and then, subsequently, someone else in the department is given the job to work out what that plan looks like and sign off on that.

Answer:

The Minister has been made aware of the questions currently being raised about offsets for the Western Sydney Airport.

Section 3.10.1 of the Airport Plan defines the Approver for the Biodiversity Offset Delivery Plan (BODP) as the Environment Minister or an SES employee in the Environment Department.

On 24 August 2018, Greg Manning, then Assistant Secretary, Assessments (WA, SA and NT) and Post Approvals Branch, Department of the Environment and Energy, approved the Western Sydney Airport BODP submitted by the Department of Infrastructure, Transport, Regional Development and Communications. The plan was not provided to the Minister for approval.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000065

Hearing Date: 4 May 2021

Division/Agency: Environment Approvals Division (EAD)

Topic: Conflicts of interest in relation to offsets and offset plans

Hansard Page: 80

Question Date: 4 May 2021

Question Type: Spoken

Senator Hanson-Young asked:

Senator HANSON-YOUNG: I might need two, if that's okay. Let's try and keep the answers snappy, and we can get through them. Mr Manning, if this is part of the department that you used to work in, perhaps you're better placed: are you aware of whether the department has ever conducted an assessment of state approval regimes as to whether they effectively manage conflict of interest?

Mr Manning: Sorry—was the question whether the department conducted a review of the state processes for conflict of interest?

Senator HANSON-YOUNG: Sorry. I'll rephrase it. I would like to know what the process is for ensuring there are no conflicts of interests when dealing with offsets and offset plans.

Mr Manning: I imagine it would be part of the process of working through. As Mr Tregurtha was saying, in the post-approval space, when there is a requirement for a management plan—it might be an offset or an offset management plan—the department does its due diligence in relation to the contents of that. It's normally against the conditions of approval. So the primary point is the—

Senator HANSON-YOUNG: Has there been any review, or is there a health check to know that there are no conflicts of interest in relation to offsets?

Mr Tregurtha: I might be able to help. I've got two things quickly on that. The first is that, where a state undertakes an offset, I would suggest that the answer to your question is that we don't review whether or not there is a conflict of interest within the state government in relation to the state's obligation for a state offset. However, one modifier to that will be that, where we are reviewing a state's processes to ensure that they are appropriate for a bilateral agreement, we look at whether or not that state process meets the obligations set out under the act. That's the first thing. In relation to the Commonwealth's provision of offsets, I'd like to take that on notice. I'm aware that there was an ANAO report released that talked about conflicts of interest. The department made a response to that ANAO review, but, in order to give you a proper answer, I'd like to take that one on notice.

Answer:

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) the Minister for the Environment's powers extend only to protecting matters of national environmental significance and to ensuring any offset obligations are properly acquitted.

Following approval of any project, the Department of Agriculture, Water and the Environment assesses the adequacy of offsets and offset management plans as proposed by the holder of an EPBC Act approval, to satisfy any conditions of their EPBC Act approval.

The commercial arrangements, including any conflicts of interest, by which offsets are purchased are not a matter for the department's consideration under the EPBC Act.

All Commonwealth agencies are subject to rigorous legislative obligations when spending public monies, including to address any real or perceived conflict of interest. These rules apply to Commonwealth agencies when purchasing offsets (land or credits).

Where offsets (land or credits) are purchased by a state government agency, addressing real or perceived conflicts of interest is a matter for that state government.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000066

Hearing Date: 4 May 2021

Division/Agency: Environment Protection Reform Division (EPRD)

Topic: Assurance Commissioner - available to Parliamentary Inquiries and Senate Estimates

Hansard Page: 82

Question Date: 4 May 2021

Question Type: Spoken

Senator Urquhart asked:

Senator URQUHART: Would the commissioner be available to parliamentary committees on environmental issues. For instance, would they come to estimates?

Mr Tregurtha: We haven't turned our mind to that specific question, but it is a statutory role. Other statutory roles do appear before committees, but again it's something I think would be a matter for the government, and we'd need to take that on notice to give a more complete answer.

Answer:

New section 501N clarifies that the Environment Assurance Commissioner will be an official of the Department of Agriculture, Water and the Environment for the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*). Consistent with other statutory appointments under the *Environment Protection and Biodiversity Conservation Act 1999*, the Environment Assurance Commissioner would be available to parliamentary committees on environmental issues, including estimates.

Environment and Communications Legislation
Answers to questions on notice
Agriculture, Water and the Environment Portfolio

Inquiry: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Question No: IQ21-000067

Hearing Date: 4 May 2021

Division/Agency: Environment Approvals Division (EAD)

Topic: Western Sydney airport investigation

Hansard Page: 83

Question Date: 4 May 2021

Question Type: Spoken

Senator Hanson-Young asked:

Senator HANSON-YOUNG: I wanted to come back to this issue of the Western Sydney airport and the report of the \$40 million that has allegedly been, effectively, corrupted. I want to know whether the department is investigating this. Have you launched an investigation and has it been discussed with the New South Wales government or your own minister?

Mr Tregurtha: We'll need to take those on notice.

Senator HANSON-YOUNG: Of course. Thank you.

Answer:

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the Minister for the Environment's powers extend only to protecting matters of national environmental significance and to ensuring any offset obligations are properly acquitted.

As the commercial arrangements by which offsets are purchased are not a matter for the Department of Agriculture, Water and the Environment's consideration under the EPBC Act, it is not investigating allegations of corruption in offset purchases. The Minister for the Environment, the Hon Sussan Ley MP has been made aware of these matters. The department has not discussed the matter with the New South Wales government.