

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.

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- 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 of 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 been 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.