4

The 'one stop shop' proposal

4.1 As discussed in earlier chapters, the current system of environmental regulation in Australia is complex, costly and involves some unnecessary duplication. To address these issues, successive federal governments have commenced negotiations with the states and territories in an effort to streamline environmental assessment and approval processes. The mechanism by which the present government seeks to deliver this outcome is the 'one stop shop' (OSS) proposal.

4.2 Designed to address business and community feedback that many environmental processes and protections are duplicated between jurisdictions,[1] the OSS proposal will accredit state and territory governments under national environmental law to administer Commonwealth environmental legislation and therefore create a single assessment and approval process for most project proponents.

4.3 Since October 2013, the Government has negotiated with the states and territories the arrangements for the OSS, and these negotiations were ongoing during this Committee's inquiry. This chapter will include a brief overview of the OSS proposal and the progress made to date. The chapter will then discuss stakeholder feedback on the identified benefits and shortcomings of the OSS. Lastly, the chapter will present stakeholders' suggested changes to the OSS proposal.

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1 Department of the Environment (DoE), *Submission 19.1*, p. 5.

Overview of the one stop shop proposal

4.4 As discussed in Chapter 2, the Commonwealth has concurrent responsibility with the states and territories for the protection of Australia's environment and the regulation of proposed projects. Under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) there are nine matters of national environmental significance (MNES) on which the Commonwealth can assess proposed projects.

4.5 Outside of these nine MNES, the states and territories have the primary responsibility for establishing systems of environmental protection within their respective jurisdictions. Therefore, under this dual system of regulation, project proponents are required to submit their proposal to both the Commonwealth and relevant state/territory authorities. This system has led the business community in particular to voice concerns regarding costs and project delays.[2]

4.6 To address these concerns, the OSS system will accredit participating states and territories to undertake those the Commonwealth's assessment and approval processes established under the EPBC Act (see Chapter 2).

4.7 Dr Kimberley Dripps, of the Department of the Environment (DoE), explained how the OSS system will operate:

> Under the reform, business will deal with the relevant state or territory as the primary regulator for environmental assessments and approvals. This change provides a single point of contact and will improve economic efficiency by facilitating swifter consideration of development applications.[3]

4.8 The DoE anticipates that business will benefit from the OSS by achieving lower administrative costs; lower compliance costs; streamlined approval of projects; more certainty for investors; and greater use of strategic assessments.[4] The DoE submitted that environmental protection would not be compromised under the OSS proposal, which aims at 'achieving at least equivalent environmental outcomes with less regulation'.[5]

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2 For example: National Farmers' Federation, *Submission 9*, p. 8; Urban Taskforce Australia (UTA), *Submission 23*, pp. 1–2; Australian Petroleum Production and Exploration Association (APPEA), Business Council of Australia, Minerals Council of Australia (MCA), *Submission 24*, pp. 3–4.

3 Dr Kimberley Dripps, Deputy Secretary, DoE, *Committee Hansard*, 27 March 2014, p. 2.

4 DoE, *Submission 19.1*, p. 7. See also Dr Rachel Bacon, First Assistant Secretary, DoE, *Committee Hansard*, 26 June 2014, p. 12.

5 DoE, *Submission 19.1*, p. 6.

4.9 The DoE also stated that the OSS is likely to benefit the environment, commenting:

> … the reform will maintain the high environmental standards of the EPBC Act. The Australian Government is committed to improving environmental standards over time cooperatively with the states and territories. To ensure this outcome continuous improvement will be a key feature of agreements with State and Territory governments.[6]

4.10 Development of the OSS relies on bilateral agreements with each state and territory.[7] This is discussed below.

Accrediting the states and territories to conduct EPBC Act processes

4.11 The EPBC Act authorises the Commonwealth to enter into two types of bilateral agreements with the states and territories: assessment bilateral agreements and approval bilateral agreements (discussed in detail below).

4.12 Such agreements will enable the Commonwealth to accredit participating jurisdictions to undertake federal assessment and/or approval functions established by the EPBC Act. The DoE submitted:

> The Commonwealth has national standards to be considered prior to entering into an agreement. The standards are based on the requirements of Commonwealth law and facilitate the maintenance of strong environmental outcomes through the one stop shop … The reform will maintain high environmental standards while delivering an improved means to achieve better outcomes for business.[8]

Progress made to date

4.13 On 16 October 2013, the Minister for the Environment, the Hon. Greg Hunt MP, announced that the framework for the OSS would involve a three-stage process with each participating state or territory, comprising:

- signing a memorandum of understanding;
- agreement on bilateral assessments and updating any existing agreements with the jurisdiction; and
- negotiation of approval bilateral agreements within 12 months.[9]

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6 DoE, *Submission 19.1*, pp. 6–7.

7 DoE, *Submission 19.1*, p. 6.

8 DoE, *Submission 19.1*, p. 6.

9 The Hon. Greg Hunt MP, Minister for the Environment, 'One-stop Shop Approved by Government', *Media Release*, 16 October 2013.

4.14 The DoE advised the Committee in May 2014 that it was 'well advanced in implementing' the Environment Minister's three-stage process, commenting that, at that time:

- memoranda of understanding to create an OSS for environmental approvals had been signed by all states and territories;
- bilateral agreements to accredit jurisdictions to conduct the EPBC Act's assessment processes were in the process of being negotiated, with agreements finalised with New South Wales and Queensland; and
- bilateral agreements to accredit jurisdictions to approve development applications under the EPBC Act were in the process of being negotiated.[10]

4.15 The two streams of agreements—assessment bilateral agreements and approval bilateral agreements—and the progress the government has made negotiating these agreements, are discussed below.

Assessment bilateral agreements

4.16 Once a state or territory government is accredited by the Commonwealth under an *assessment* bilateral agreement, that state or territory will be authorised to carry out the assessment processes established in the EPBC Act (see Chapter 2). As foreshadowed above, this will allow a project proponent to submit a development application (addressing the relevant matters required under the EPBC Act and any other state or territory legislation) to the state or territory authority without also having to submit the proposal to the Commonwealth DoE.

4.17 However, unless the state or territory is also accredited under an *approval* bilateral agreement with the Commonwealth, the proposal will still require approval by the federal Environment Minister under the EPBC Act. In making this decision, the minister will use the reports developed by the state or territory assessment process.

4.18 The Commonwealth began entering into assessment bilateral agreements with the states and territories in 2007, with many of these initial agreements limited to certain projects requiring methods of assessment such as environmental impact statements.[11] Since October 2013, the Commonwealth has been negotiating extensions to these initial

10 DoE, *Submission 19.1*, p. 6.

11 For example, see current Agreement between the Commonwealth and the Government of the Northern Territory Relating to Environmental Impact Assessment (concluded on 28 May 2007) <http://www.environment.gov.au/protection/environment-assessments/bilateral-agreements/nt> viewed 11 September 2014.

agreements and seeking to establish new agreements to cover a wider range of assessment processes outlined in the EPBC Act.

4.19 The Commonwealth has concluded these extended assessment bilateral agreements with the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.[12] At the time of writing, the Commonwealth is in the process of negotiating an assessment bilateral agreement with the Northern Territory.[13]

Approval bilateral agreements

4.20 Where a state or territory has concluded a bilateral agreement with the Commonwealth accrediting that jurisdiction to conduct *approvals* under the EPBC Act, the relevant state or territory authorities will approve or reject development applications according to the processes, tests and standards required by the EPBC Act. Following a relevant assessment being carried out by that state or territory, no separate Commonwealth referral, assessment or approval will be required for proposals that fall under accredited processes. More specifically, no further approval is required from the federal Environment Minister under the EPBC Act. However, the EPBC Act also establishes 'what the minister is required to do if he believes that those agreements are not operating in the way in which they should be'.[14]

4.21 The DoE stated that approval bilateral agreements will specifically include assurance processes 'to provide confidence to the Commonwealth Government and the public that the standards required of the Commonwealth under the EPBC Act are being met'.[15] The assurance framework is discussed in the next section of this chapter.

4.22 At the time of writing, the Commonwealth has not yet finalised an approval bilateral agreement with any state or territory. *Draft* approval bilateral agreements have been developed with the Australian Capital Territory, New South Wales, Queensland, and Tasmania. Public consultation periods occurred for all these draft agreements, and have subsequently closed. At the time of writing, these agreements are yet to be finalised.[16]

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12 DoE, 'Bilateral Agreements' <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements> viewed 26 November 2014.

13 DoE, 'Bilateral Agreements' <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements> viewed 26 November 2014.

14 Dr Dripps, DoE, *Committee Hansard*, 27 March 22014, p. 4.

15 DoE, *Submission 19.1*, p. 6.

16 DoE, 'Bilateral Agreements' <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements> viewed 26 November 2014.

4.23 As required under section 45(3) of the EPBC Act, the minister has published a Notice of Intent to develop approval bilateral agreements with the remaining jurisdictions: Northern Territory, South Australia, Victoria, and Western Australia. At the time of writing, no draft agreements with these jurisdictions had been released for public comment.[17]

4.24 It appears the intent of the Commonwealth is for these agreements to continue in their operation until they are rescinded or revoked by one of the parties.[18] However, a review of bilateral approval agreements (by 'studies, evaluations and other activities intended to analyse the success of the agreement in achieving its objectives') will be conducted at least every five years, as required under the EPBC Act.[19]

Assurance framework: standards, performance, outcomes

4.25 The EPBC Act enables the Environment Minister to negotiate bilateral agreements with the states and territories only where the minister is satisfied that the agreement accords with the objects of the Act and it meets any specific requirements of the Act or prescribed by regulations.[20]

4.26 To ensure adequate environmental protections are maintained, an assurance framework will provide a 'series of checks and balances to support a stable and durable one-stop shop'.[21] More specifically, it will incorporate a series of standards that states and territories must meet in order to be accredited to conduct environmental assessments and approvals under the EPBC Act.[22]

4.27 To ensure that commitments are met under approval bilateral agreements and that the Commonwealth can meet its reporting obligations (such as the annual report to Parliament and international reporting obligations), the framework will also include performance assurance measures such as

17 DoE, 'Bilateral Agreements' <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements> viewed 26 November 2014.

18 For example, see Clause 3, 'Draft Approval Bilateral Agreement Between the Commonwealth of Australia and the Australian Capital Territory' <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/act> viewed 26 September 2014.

19 EPBC Act, s. 65. See also, DoE, 'Approval of Bilateral Agreements Under the EPBC Act—the Draft ACT Agreement Explained' <http://www.environment.gov.au/system/files/pages/478185ae-cc4e-4504-9cd8-28158749d5c6/files/act-approval-explanatory-document.pdf> viewed 26 September 2014, p. 8.

20 EPBC Act, s. 44.

21 Dr Dripps, DoE, *Committee Hansard*, 27 March 2014, p. 2.

22 DoE, *Submission 19.1*, p. 8.

monitoring, risk-based auditing and review provisions that provide timely resolution of disputes.[23]

4.28 Lastly, the assurance framework will include outcomes assurance measures. Outcomes assurance will be achieved by 'open access to environmental information and data and by streamlined advice and guidance'.[24] The DoE submitted that open access to publicly available information can:

> … reduce transaction costs for government and business, expedite environment approvals, lead to a greater understanding of cumulative impacts, and facilitate strategic assessments and regional scale planning. [25]

4.29 Dr Dripps, from the DoE, commented that:

> What we need to do, though, in outline, is satisfy ourselves that the standards of the EPBC Act are being met, because if we did not there would be a legal concern about the validity of the agreements. Then, in agreeing to the agreements when he does, the minister has to provide reasons as to why he has come to that view. That will be based on lining up the standards of the EPBC Act with the operations of the individual pieces of state and territory legislation and checking that outcomes will be achieved. Then there will be some public reporting requirements that will demonstrate both the economic and the environmental outcomes of the reform. Then of course there is the regular process of looking at the state of the environment for reporting.[26]

4.30 All elements of the framework (standards, performance and outcomes assurance) will be given legal effect within each approval bilateral agreement concluded with the states and territories.[27]

Benefits of the OSS proposal

4.31 Participants in the inquiry identified three general benefits of the OSS proposal:

- reduced duplication between the federal and state/territory governments;

23 DoE, *Submission 19.1*, p. 8.
24 DoE, *Submission 19.1*, p. 8.
25 DoE, *Submission 19.1*, p. 8.
26 Dr Dripps, DoE, *Committee Hansard*, 27 March 2014, p. 5.
27 DoE, *Submission 19.1*, p. 8.

- provision of greater clarity, certainty and efficiency; and
- state governments are better placed to deal with planning systems and local environmental issues.

Reducing duplication

4.32 As outlined in Chapter 3, many inquiry participants were concerned about duplication in the current system of environmental regulation at the Commonwealth and state/territory levels. Their response to the OSS proposal, which intends to reduce duplication, was therefore unsurprisingly positive.

4.33 Urban Taskforce Australia (UTA) expressed its support for the Government's deregulation agenda. UTA also advocated for bilateral agreements with all states and territories to cover both the assessment and approval processes, in order to achieve a genuine OSS for all stages of a project's review.[28]

4.34 The Australian Petroleum Production and Exploration Association stated that the OSS 'will remove one of the more significant areas of overlap between jurisdictions without compromising environmental standards'.[29] Mr Michael Bradley stated:

> Duplication of regulation does not improve environmental outcomes and does nothing to improve public confidence in governments or the regulatory system. Duplication diverts government and industry resources from more productive uses. Therefore, the removal of duplicative regulation means tangible reductions in delays and in costs. The one-stop shop process has the potential to deliver significant streamlining of Australia's environmental regulation, as reflected in the recommendations of numerous Australian reports and reviews.[30]

4.35 The Minerals Council of Australia (MCA) similarly noted that streamlining regulations and effective environment protections are 'not mutually exclusive concepts ... and that a single approvals process can meet both objectives, that is, more timely consideration of projects and effective and efficient regulation'.[31]

28 Mr Chris Johnson, Chief Executive Officer, UTA, *Committee Hansard*, 1 May 2014, p. 21.

29 Mr Michael Bradley, Director, External Affairs, APPEA, *Committee Hansard*, 20 June 2014, p. 7.

30 Mr Bradley, APPEA, *Committee Hansard*, 20 June 2014, p. 8.

31 Mr Brendan Pearson, Chief Executive Officer, MCA, *Committee Hansard*, 20 June 2014, p 1.

Providing clarity, certainty, and efficiency

4.36 Another benefit of the OSS proposal as identified by inquiry participants, is the ability to provide clarity, certainty and efficiency for project proponents and the community alike. For example, the Property Council of Australia (PCA) noted how the OSS proposal will reverse current uncertainty and inefficiency:

> What we have seen over time is a demonstrated lack of clear definitions, rules and tests, broad objective interpretations over the last 10 years with little consistency or certainty for the industry and long extensive times in terms of decision making. … A one-stop shop … would have the most productivity gains, provide the largest level of certainty and actually provide a background for investment across property, especially in the space of housing.[32]

4.37 The OSS proposal has also been identified by community groups as granting greater certainty about environmental regulations and efficiency in their implementation. Mr Andrew Bradey, President of the Environmental Farmers Network (EFN), stated:

> The idea of streamlining how [regulation] is applied, I think, is an extremely good idea and certainly we would support that. The business of a one-stop shop, I think, is a good way to go. ... We have people in our area who have to clear to carry out their agricultural activities. In my experience, they are happy to comply with the regulations, but they like to know what they are. They do not want to be complying with what the person from the local government tells them … and then … get a tap on the shoulder from someone from Canberra saying, 'You might have done that, but you haven't complied with EPBC.'[33]

4.38 The MCA also advocated that the OSS will increase clarity and certainty and drive greater efficiency more broadly as it will give 'one set of environmental impact assessment processes, one set of approvals, one set of conditions and one requirement for an offset'.[34]

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32 Ms Caryn Kakas, Head, Government and External Affairs, Property Council of Australia (PCA), *Committee Hansard*, 1 May 2014, p. 5.

33 Mr Andrew Bradey, President, Environmental Farmers Network (EFN), *Committee Hansard*, 2 May 2014, p. 24.

34 Ms Melaine Stutsel, Director, Health, Safety, Environment and Community Policy, MCA, *Committee Hansard*, 20 June 2014, p. 2.

States are better placed to respond to local environment issues

4.39 Industry organisations stated that one of the benefits they identified in the OSS proposal was that states are better placed to engage with planning systems and have better knowledge of local environment issues.

4.40 For example, Mr Andrew Doig, from the Australian Sustainable Business Group, noted that current Commonwealth processes are more 'bureaucratic' in contrast to the approaches of state governments. Further, Mr Doig stated that Commonwealth regulators have less '… knowledge of what is actually happening out there in the real world when things are handled by a federal body rather than a state body'.[35]

4.41 Similarly, the MCA stated that, in their experience, 'state governments have a much closer association with both mining projects and the geography in which the projects are located, so we tend to get a much more informed assessment of the project'.[36] Ms Melanie Stutsel gave an example of how state governments have a better understanding of local environment issues compared with the Commonwealth:

> … one of our member companies was going through an environmental approval process in Western Australia. They went through the standard Western Australian approval process, got their approval in place and a set of conditions and an offset requirement associated with that. At the same time they were going through the EPBC Act process. Now, because of the lack of familiarity of the Commonwealth officers undertaking that assessment with both the project and the environment in which that project was being undertaken, what we saw were conditions that would relate more to temperate or semi-temperate ecosystems being applied to an arid environment. So, for example, that company was asked to provide scientific justification for why the materials in its tailing storage facility would not have an impact on platypus in the region. Now, platypus have not been seen in arid Australia for some thousands of years. [37]

4.42 However, the efficacy of granting state and territory governments the ability to assess and approve projects—which they can be the proponent of—also drew criticism from some inquiry participants. These criticisms are discussed below along with other views on the OSS proposal.

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35 Mr Andrew Doig, Chief Executive Officer, Australian Sustainable Business Group, *Committee Hansard*, 1 May 2014, p. 3.

36 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 3.

37 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 3.

Criticisms of the OSS proposal

4.43 Participants in the inquiry expressed two general criticisms of the OSS proposal: state governments are inappropriately placed to administer federal regulations; and eight separate assessment and approval systems will be created, instead of a single OSS. Both of these views are presented below.

Appropriateness of states and territories to administer federal regulations

4.44 Several participants in the inquiry took issue with the OSS proposal's intention to devolve Commonwealth responsibilities to the states and territories.[38] This criticism appeared to focus on two related concerns, which are discussed below.

Conflict of interest situations

4.45 First, states are often project proponents individually or in partnership with developers, or stand to benefit considerably from projects. Therefore some inquiry participants expressed doubt about the ethics of state governments conducting assessment and approval processes under the EPBC Act. For example, the Australian Network of Environmental Defenders Offices (ANEDO) stated:

> There is a real danger around conflicts of interest of states making certain decisions, especially about major projects. They … would be put in the place where they would be making decisions where they would stand to benefit greatly—for example, for royalties if it is a large mining project and so on—so there is a great potential for conflict there.[39]

4.46 Mr Chris Walker, an inquiry participant, questioned the Queensland Government's capacity to administer federal environmental legislation effectively.[40] Mr Walker advised that the Queensland Audit Office had recently identified serious deficiencies in how environmental management

38 Ms Rachel Walmsley, Policy and Law Reform Director, EDO NSW, Australian Network of Environmental Defender's Offices (ANEDO), *Committee Hansard,* 1 May 2014, p. 42; Mr Chris Walker, *Submission 40*, p. 2; The Australia Institute (TAI), *Submission 39*, p. 4; Mr Ross Mackay, Solicitor, Strategic Development, NTSCORP Limited, *Committee Hansard*, 1 May 2014, p. 26; Law Council of Australia (LCA), *Submission 37*, pp. 14–15.

39 Ms Walmsley, ANEDO, *Committee Hansard,* 1 May 2014, p. 42.

40 Mr Walker, *Submission 40*, p. 2.

responsibilities are being discharged by two Queensland Government departments.[41]

4.47 Similarly, the Australia Institute expressed doubt about the capacity of state governments to administer federal regulations.[42] The efficacy of state governments was also questioned by NTSCORP Limited, a native title service provider, given its view of the New South Wales system's record on involving traditional owners in the environmental assessment and approvals process:

> … the focus of the inquiry in removing … the implied role of the Commonwealth in development assessment approval processes is to our clients inappropriate given the failures of the New South Wales planning system to have a role to properly represent here and involve traditional owners in the process.[43]

4.48 Responding to some of these criticisms, the MCA stated that these apparent conflicts of interest can be overcome. In the view of the MCA, states have the appropriate capacity to undertake assessments particularly if they can access independent advice from the Independent Expert Scientific Committee.[44]

4.49 Ms Stutsel from the MCA expanded:

> I do not think [a conflict of interest] is there, because effectively we would say that the same conflict of interest would therefore also exist with the federal government in terms of the large tax receipts, for example, through corporations tax. …. Provided that the environmental approval is done to an agreed set of standards in a manner that is consistent and transparent, and which enables public engagement in the process, I think stakeholders should have confidence in both the process and the outcomes.[45]

41 Queensland Audit Office, *Environmental Regulation of the Resources and Waste Industries, Report 15: 2013–14* <https://www.qao.qld.gov.au/report-15-:-2013-14> viewed 18 November 2014.

42 TAI, *Submission 39*, p. 4.

43 Mr Mackay, NTSCORP, *Committee Hansard*, 1 May 2014, p. 26.

44 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 4.

45 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 4.

Implementing Australia's international obligations

4.50 The second concern expressed by some inquiry participants is that under the OSS proposal, state and territory governments would be required to implement Australia's international obligations, without being properly equipped to do so.

4.51 The Law Council of Australia (LCA) submitted that the EPBC Act granted assessment and approval power to the federal government to overcome 'shortcomings in state and territory assessment and development processes' in order to secure compliance with international environmental obligations. The LCA argued:

> The proposed approach … is likely to weaken best practice environmental governance in Australia. States tend not to participate in the meetings of subsidiary bodies/working groups under multilateral environmental agreements (MEAs), nor attend the conferences of the parties under MEAs and to miss out on participating in the process of acquiring the knowledge necessary to set impact assessment guidelines consistent with international law.[46]

4.52 By contrast, the MCA argued that bilateral agreements require states and territories to meet certain standards under the assurance framework. According to the MCA, the bilateral agreements also grant the Commonwealth an enforcement mechanism and assurance process, including the ability to resume responsibility for a project's assessment and/or approval process at any time.[47]

The risk of creating an 'eight stop shop'

4.53 Some participants in the inquiry argued that eight separate state-based systems will still remain under the OSS proposal, thereby negating any claims of improved efficiency. For example, the LCA submitted:

> The Law Council is concerned that the proposal for state-based one-stop-shops will actually create multiple regimes in nine different jurisdictions. This may not be welcomed by national and multinational corporations seeking to operate more efficiently and cost-effectively across state borders in Australia.[48]

4.54 Similarly, ANEDO commented that the OSS may create further complexity and fragmentation 'with a confusing eight-stop-shop approach

46 LCA, *Submission 37*, pp. 14-15.

47 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 4.

48 LCA, *Submission 37*, p. 13.

of different state and territory systems, as Commonwealth requirements are bolted on to the different state legislative structures'.[49]

4.55 However, the PCA and the MCA commented that, despite different regimes in each state and territory, the OSS would still reduce duplication and delays compared to the current system, and provide much needed certainty. Ms Caryn Kakas, of the PCA, stated:

> I have no problem with eight one-stop shops, because at the end of the day it will take a decade or more if we put in pure effort to get harmonisation across planning systems. What is most important is certainty. … I would rather have an environmental one-stop shop that links to the planning system of each jurisdiction, one that is accredited by the federal government, than wait two or three decades and continue the ongoing dramas that we have by, hopefully, someday getting one aspirational system across all jurisdictions.[50]

4.56 Similarly, the MCA noted that although it is 'extremely rare' for a project to cross state boundaries, in such an event two jurisdictions would be engaged under the OSS proposal (the two relevant states/territories), rather than three as is the case at present (the two relevant states/territories plus the Commonwealth). Further, Ms Stutsel commented that recent cross-jurisdictional projects have seen greater collaboration between the states' environmental assessment processes.[51]

Suggested improvements to the OSS proposal

4.57 Although the Committee notes that the negotiations for bilateral agreements are ongoing with most jurisdictions, participants in the inquiry advocated for various improvements to the OSS. The suggested changes can be broadly grouped under the headings:

- content and scope of bilateral agreements;
- statutory time frames; and
- the assessment process.

4.58 Each is addressed below and is followed by the Committee's comment on the specific proposals.

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49 Ms Walmsley, ANEDO, *Committee Hansard*, 1 May 2014, p. 38.

50 Ms Kakas, PCA, *Committee Hansard*, 1 May 2014, p. 10.

51 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 5.

Content and scope of bilateral agreements

Water trigger

4.59 The 'water trigger' is the most recent MNES added to the EPBC Act and assesses the impacts on water of large coalmining and coal seam gas operations. Importantly, it is a trigger for a particular kind of activity rather than for a particular environmental impact.[52]

4.60 The MCA stated that the water trigger should be repealed from the EBPC Act because 'it is duplicative of processes that exist both with the National Partnership Agreement and also in terms of the existing state approval processes'.[53]

4.61 In contrast, the Lock the Gate Alliance recommended that the water trigger be expanded to include other forms of unconventional gas including shale and tight gas developments, as well as unconventional coal developments such as underground coal gasification.[54] The LCA also considered that the water trigger is 'important to maintain in response to concerns about gas extraction impacting on agricultural land and protected areas'.[55]

4.62 QGC, a coal bed methane mining company operating in the Bowen and Surat Basins in Queensland, stated that if the water trigger is retained in the EPBC Act, it should be included as part of the OSS. Ms Tracey Winters stated that:

> … the coalmining industry and the natural gas industry right throughout the east coast involves many issues that relate to the management of water and, given that that is a major area of focus for ensuring environmental performance, having a bilateral process that does not allow the state to also consider those water matters means that almost all coalmining and natural gas projects would still be faced with two assessment processes.[56]

4.63 The DoE submitted in May 2014 that the water trigger was being considered for review or amendment.[57] The DoE stated that it was in the in the 'early stages of scoping the post-implementation review of the water trigger' and would 'consider the costs and benefits of the water trigger

52 Dr Dripps, DoE, *Committee Hansard*, 27 March 2014, p. 8.

53 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 4.

54 Lock the Gate Alliance, *Submission 36*, p. 8.

55 LCA, *Submission 37*, p. 10.

56 Ms Tracey Winters, Vice President, Land and Environment, QGC, *Committee Hansard*, 2 May 2014, p. 2.

57 DoE, *Submission 19.1*, p. 10.

amendment'.[58] The DoE also foreshadowed that it was looking to streamline 'the operation of the water trigger for projects currently being assessed under the EPBC Act through the use of assessment bilateral agreements'.[59]

Offsets provisions

4.64 The Committee heard from multiple industry stakeholders who had experienced duplicative, and sometimes inconsistent, conditions placed on a project by state/territory and Commonwealth administrators.

4.65 QGC advocated for offset provisions to be included in bilateral agreements. Ms Winters stated:

> Our own experience in 2009 and 2010 involved two years of separate assessment processes with the state and the Commonwealth, and two separate sets of conditions covering many of the same matters. As a result, we now track compliance with about 1,500 conditions and thousands of subconditions. [60]

4.66 Though acknowledging industry concern that offsets are 'not particularly well-related to the [development] activity itself', Mr Martin Hoffman, of the Department of Industry, stated:

> With regard to offsets, as with all elements of an environmental management regime, it is important that there be certainty and clarity in what is required and that the regime effectively not be used … as a sort of negotiation point. You should be able to reach an outcome on the facts rather than having to negotiate what an acceptable offset is.[61]

4.67 In addition, QGC argued that the offset regime could be more integrated with the conservation objectives of both the Commonwealth and the states and territories. Ms Winters of QGC stated:

> We think that the contributions that are currently made by projects and project proponents towards offsets might deliver better environmental outcomes if they were administered by the Commonwealth or the states.[62]

58 DoE, *Submission 19.1*, p. 16.

59 DoE, *Submission 19.1*, p. 16.

60 Ms Winters, QGC, *Committee Hansard*, 2 May 2014, p. 1.

61 Mr Martin Hoffman, Deputy Secretary, Department of Industry, *Committee Hansard*, 26 June 2014, p. 2.

62 Ms Winters, QGC, *Committee Hansard*, 2 May 2014, p. 1.

National Parks

4.68 The National Tourism Alliance (NTA) recommended that the relevant national parks legislation be included in the OSS mechanism. Ms Julianna Payne, Chief Executive Officer of the NTA, stated:

> Our proposal, in keeping with the principles of the aims of this policy, is to advocate that there is a policy for appropriate tourism developments, including within national parks and other protected areas, which have state government approvals, to automatically be accepted under the Environmental Protection and Biodiversity Conservation Act without any further federal compliance needed.[63]

4.69 Ms Payne advised the Committee that, as of May 2014, no state or territory jurisdiction has included national parks legislation within their bilateral agreements with the Commonwealth.[64]

Committee comment

4.70 The Committee is strongly supportive of the OSS proposal and its progress to date. Overall, the Committee is broadly satisfied by the content and coverage of the bilateral agreements with the states and territories.

4.71 The Committee welcomes the DoE working to include the water trigger as part of the bilateral agreements with the states and territories. The Committee notes evidence from the DoE in March 2014 that the water trigger is 'presently unable to be delegated to the states through the one-stop shop approvals bilateral [agreements]'.[65] However, the Committee is aware that on 14 May 2014 the Environment Minister introduced the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 into the House of Representatives.

4.72 Among other changes, the bill seeks to amend the EPBC Act by providing that:

- states and territories would be able to be accredited for approval decisions on large coal mining and coal seam gas developments likely to have a significant impact on a water resource (also known as the 'water trigger');

63 Ms Julianna Payne, Chief Executive Officer, National Tourism Alliance (NTA), *Committee Hansard*, 1 May 2014, p. 17.

64 Ms Payne, NTA, *Committee Hansard*, 1 May 2014, p. 18.

65 Dr Dripps, DoE, *Committee Hansard*, 27 March 2014, p. 8.

- all states and territories would be authorised to request advice from the Independent Expert Scientific Committee (IESC); and
- the IESC would provide advice to the Commonwealth about the operation of a bilateral agreement in relation to the water trigger where the development is likely to have a significant impact on a water resource.

4.73 The bill would therefore enable the federal Environment Minister to include the water trigger in approval bilateral agreements with the states and territories. At the time of writing, the bill is currently before the Senate for consideration and debate.

4.74 The Committee supports the inclusion of the water trigger in the approval bilateral agreements with the states and territories as well as the required legislative changes to the EPBC Act to allow this to occur.

4.75 The Committee welcomes the streamlining of offset requirements that will be brought about by the OSS proposal. The Committee understands that, where a state or territory enters into an approval bilateral agreement with the Commonwealth, the offset requirements of any approval granted under that arrangement will also include the offset arrangement. Therefore, the state's own offset requirements (as established through state regulation) will be combined with the offset requirements under the EPBC Act to provide one set of offsets or conditions.

4.76 In relation to the proposal to include national parks in the OSS system, the Committee understands that, apart from the six Commonwealth national parks and marine reserves, responsibility for national parks and reserves is principally a matter for the states and territories. In the absence of evidence to the contrary, the Committee is therefore satisfied that the current system provides adequate protection and flexibility in relation to arrangements for national parks.

Statutory time frames

4.77 One of the goals of the OSS proposal is to reduce unnecessary delays and give greater certainty to stakeholders about the duration required between lodging an application and its assessment and approval. However, in consolidating these processes into an OSS, the Clean Energy Council cautioned against the OSS taking the same cumulative amount of time as the current two-level process. Mr David Green stated:

> I think a one-stop shop is a great thing to aspire to, but I think there is probably a little way to go behind the front door to make sure we do not just end up with three times one questionnaire.[66]

4.78 Similarly, a range of stakeholders advocated for the adoption of statutory time frames and greater certainty about the length of time processes will take.[67] For example, the EFN stated that the introduction of statutory time frames would be 'another level of clarity'. Mr Andrew Bradey commented:

> Right now we are saying, 'These are the hoops we have to jump through, but we do not know how long it is going to take to jump through the last one and get on with it.' It would be good to be able to say it is going to take, say, six months from when you put your application in and have it assessed to know either way.[68]

4.79 The MCA supported 'statutory time frames that provide certainty for both proponents, government and other stakeholders'.[69] The PCA also advocated for statutory time frames:

> … it is about having an overarching certainty around when we put an application in and when the clock starts for that application to receive some level of certainty of an outcome, which is very important in an environment where we have to deal with risk management and decisions about where we invest our finance and which projects we go forward with. [70]

4.80 More specifically, the PCA supported the statutory time frames proposed in the 2008 *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (known as the Hawke Review) of 30, 60 and 90 day provisions.[71]

4.81 ANEDO however noted that the EPBC Act establishes time frames for decisions (which are set out in Chapter 2 of this report), and suggested some of the existing certainty around time frames may be compromised

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66 Mr David Green OBE FRSA, Chief Executive, Clean Energy Council, *Committee Hansard*, 2 May 2014, pp. 10–11.

67 Mr Bradey, EFN, *Committee Hansard*, 2 May 2014, p. 28; Mr Johnson, UTA, *Committee Hansard*, 1 May 2014, p. 22; Ms Kakas, PCA, *Committee Hansard,* 1 May 2014, p. 8.

68 Mr Bradey, EFN, *Committee Hansard*, 2 May 2014, p. 28.

69 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 2.

70 Ms Kakas, PCA, *Committee Hansard,* 1 May 2014, pp. 11–12.

71 Ms Kakas, PCA, *Committee Hansard,* 1 May 2014, pp. 12. See also: Dr Allan Hawke, *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, 21 December 2009 <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008> viewed 26 September 2014.

by the Commonwealth devolving responsibility to some states and territories where no statutory time frames exist. ANEDO stated that:

> … actually some of the state systems … do not necessarily have those time frames, yet it is the states that these powers are being delegated to. So we would say that you are not seeing a delay from Commonwealth approval powers, because they have those time frames in place.[72]

4.82 Some of the criticisms about delays within the Commonwealth system seem to relate to 'stop-the-clock' provisions. Ms Rachel Walmsley, of ANEDO, responded to criticisms of stop-the-clock provisions in the EPBC Act, stating:

> Stop-the-clock provisions are an important safeguard where sometimes the delay is caused by insufficient or inadequate information provided by a proponent. So if there is a genuine need for the decision maker to go back and request more information then that would be appropriate to have the kind of safeguard in place like a stop-the-clock provision.[73]

4.83 The DoE advised that the time frames which will apply under the OSS arrangement will be those established by the laws of the relevant state or territory. Dr Rachel Bacon stated:

> Rather than change all the state and territory processes, it is about accrediting existing state and territory processes, provided that they meet the standards that are set out in the EPBC Act that are designed to protect environmental outcomes. So, the time frames we talked about that apply in the state and territory processes would be the ones that continue to apply.[74]

4.84 Further, the DoE commented that, although stop-the-clock provisions are undoubtedly frustrating for project proponents, 'it is absolutely essential for ensuring that the final information package that comes to a decision maker is robust and will underpin that decision'.[75]

Committee comment

4.85 The Committee supports the need for industry and community groups to have greater certainty regarding time frames for environmental

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72 Mr Nariman Sahukar, Senior Policy and Law Reform Solicitor, EDO NSW, ANEDO, *Committee Hansard*, 1 May 2014, p. 40.

73 Ms Walmsley, ANEDO, *Committee Hansard*, 1 May 2014, p. 40.

74 Dr Rachel Bacon, First Assistant Secretary, DoE, *Committee Hansard*, 26 June 2014, p. 11.

75 Mr Dean Knudson, Acting Deputy Secretary, DoE, *Committee Hansard*, 26 June 2014, p. 11.

assessments and approvals. Not only can delays be costly to business, they can also cause uncertainty within communities.

4.86 The Committee therefore identifies a need for reasonable statutory time frames to be established in all bilateral agreements between the Commonwealth and the states and territories. The Committee notes advice from the DoE to the effect that 'most' jurisdictions have statutory time frames for decision-making processes.[76] The detailed information provided by the Department, however, covers only the jurisdictions of New South Wales and Queensland.[77]

4.87 The Committee strongly supports the inclusion of reasonable statutory time frames in *all* bilateral assessment and bilateral approval agreements the Commonwealth enters into under the EPBC Act.

Recommendation 1

The Committee notes the success of the Commonwealth's pursuit of concluding agreements with states and territories on one stop shops. The Committee recommends that the Commonwealth continue to conclude bilateral assessment agreements and bilateral approval agreements with outstanding state and territory jurisdictions as quickly as possible.

The Committee recommends that the Department of the Environment ensure that reasonable statutory time frames—that is, within or about the time frames currently set out in the *Environment Protection and Biodiversity Conservation Act 1999*—are established in each bilateral assessment agreement and bilateral approval agreement that the Commonwealth concludes with each state and territory.

The assessment process

4.88 Inquiry participants made recommendations regarding the OSS environmental assessment process, including the development of more efficient and effective terms of reference for environmental impact statements (EIS).

4.89 Two industry organisations claimed that the OSS process could achieve greater efficiency if risk-based terms of references were adopted for EIS.

76 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, p. 11.

77 DoE, *Submission 19.2*, pp. 3–8.

4.90 The Queensland Ports Association (QPA) stated that assessment and approval processes could be streamlined through the 'proper adoption of "evidenced based" assessments using rigorous science and risk assessment methods'.[78] QPA submitted that:

> Too often project assessments are delayed due to 'opinions' of regulators, scientists or interest groups that are not supported by scientific evidence or previous actual examples. … There needs to be greater emphasis and reliance placed on sound risk based assessment methodologies. The first step is the development of risk-based assessment terms of reference, targeted at issues of importance or environmental risks.[79]

4.91 In the view of QPA, such risk-based terms of reference would consider the following matters:

- greenfield versus brownfield activity;
- land use zoning;
- project type and scale;
- environmental values present; and
- proven environmental and project management measures to be applied.[80]

4.92 Ms Stutsel from the MCA also supported risk-based terms of reference for EIS, commenting that matters included in these statements:

> … should be based on a comprehensive risk assessment, and they should be material [matters]... [Currently] even issues that have an immaterial risk—so either a very low consequence or a very low likelihood of occurring—require the same level of assessment.[81]

Committee comment

Recommendation 2

The Committee recommends that the Department of the Environment ensure that each bilateral agreement between the Commonwealth and the states and territories require the implementation of risk-based terms of reference for environmental impact statements.

78 Queensland Ports Association (QPA), *Submission 42*, p. 2.

79 QPA, *Submission 42*, p. 7.

80 QPA, *Submission 42*, p. 7.

81 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 2.

4.93 With the above considerations taken into account, and recommended changes implemented, the Committee is confident that the establishment of the OSS system will go a long way to addressing concerns about duplication, inefficiency and inconsistency that were raised about the current system in Chapter 3. Aside from the OSS proposal, the Committee was presented with extensive feedback from inquiry participants on a range of matters relating to the current system of environmental regulation. These are canvassed in the following chapter.