

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

Question No: 35
Hearing: Additional Estimates
Outcome: Outcome 5
Programme: Environment Assessment and Compliance Division
Topic: Bilateral agreements - general
Hansard Page: N/A
Question Date: 07 March 2014
Question Type: Written

Senator Waters asked:

I understand that the deadline for a hand-off of Commonwealth environmental approvals powers is November.

1. Under the proposed approvals bilateral agreements, which level of government carries the legal risk if a decision is challenged in a court or tribunal?
2. Does the Department anticipate that Commonwealth officers will be embedded in State environmental regulators?
3. If so, how many staff are proposed to be embedded?
4. How long will those staff remain with State regulators?
5. Is it anticipated that redundancies and job losses will affect the assessment and compliance divisions of the Department before the November deadline?
6. How does the Department propose to maintain environmental standards if Commonwealth staff are subject to redundancies and job cuts?
7. Have any States been asked to amend their environmental laws? Please provide details of proposed amendments.
8. Have any States been asked to amend their environmental policies, for instance, offset policies? Please provide details of proposed amendments.
9. How does the Commonwealth Department propose to maintain environmental standards in the absence of any amendment of State environmental laws or policies?
10. Under the proposed approvals bilateral agreements, will Commonwealth or State offsets policy be used to assess the adequacy of offsets?

Answer:

1. The decision of the Commonwealth Minister to enter into an approvals bilateral agreement is an administrative decision under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). Therefore the decision to enter into that agreement is itself subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. Under an approval bilateral agreement, approval decisions are made by the state or territory decision maker under an accredited state or territory process. Any review rights for decisions made under the relevant authorised state or territory process would apply.
2. Yes. Minister Hunt has stated that “the Federal Government is also offering to place staff in the state offices to ensure the implementation occurs as smoothly and as quickly as possible.” [Media Release, Minister Hunt, 16 October 2013]
3. This matter is the subject of discussions between the Commonwealth and relevant state and territory governments.

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5. The Department is currently undertaking a review to examine its role and functions, and to advise on the most effective future structural and governance arrangements for the agency. No decisions have been made by the Department in relation to any future redundancy programme or where adjustments may be made.
6. The Department is currently undertaking a review to examine its role and functions, and to advise on the most effective future structural and governance arrangements for the agency. No decisions have been made by the Department in relation to any future redundancy programme or where adjustments may be made. Under the one stop shop policy, the Commonwealth remains legally and publicly accountable for its obligations under the EPBC Act. The Department will continue to perform functions that are necessary to acquit its obligations.
7. To be accredited, state processes must meet the EPBC Act accreditation requirements. The Commonwealth are in continued negotiations with state and territory governments on a range of matters related to approval bilateral agreements.
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