

Senator Cameron asked several questions which Mr Oxley took on notice. The secretariat's noted the questions as:

**1. What would be the implications for Australia's international obligations if the bill is passed?**

Answer: The Bill, if passed, in itself would not cause Australia to fail to meet its international commitments and obligations. However, if the Parliament subsequently was to disallow the proclamation of new Commonwealth marine reserves, it is possible that Australia would not meet the commitments it made at the World Summit on Sustainable Development in 2002.

Australia committed through the Johannesburg Plan of Implementation agreed at the World Summit on Sustainable Development to:

*Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors.*

**2. What are the implications for the strict liability offences in section 24A of the Environment Protection and Biodiversity Conservation Act committed under a new Commonwealth reserve or Commonwealth marine reserve that is subsequently disallowed?**

Answer: The disallowance of a Proclamation declaring a Commonwealth reserve made under section 344 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) would not affect any strict liability offences that were committed in contravention of section 24A of the EPBC Act whilst the Proclamation was in effect.

The disallowance of a legislative instrument has the same effect as if the instrument was repealed with effect from the time it was disallowed (section 45 Legislative Instruments Act). Section 15 of the Legislative Instruments Act relevantly provides that the repeal of any legislative instrument does not, unless the contrary intention appears in the Act or legislative instrument affecting the repeal affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the instrument (paragraph 15(d)) or affect any investigation, legal proceeding or remedy in respect of any penalty, forfeiture or punishment (paragraph 15(e)) and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or instrument had not been enacted or made.

**3. Do you foresee any other logistical consequences for industry and other stakeholders from disallowing bioregional plans and Proclamations for Commonwealth reserves and Commonwealth marine reserves?**

Answer: The primary impact of a disallowance provision for the making of bioregional plans would be to preclude the Minister from being able to make a declaration under section 37A of the EPBC Act.

The main impact of disallowing the proclamation of new Commonwealth marine reserves would be on the timing of the processes for deciding and delivering any structural adjustment assistance to marine users displaced by the proposed reserves. If there was a chance that a proclamation could be disallowed, any structural adjustment assistance could only be reasonably delivered after the Parliament had had the opportunity to disallow the Proclamation.

It is also possible that the disallowance of a Commonwealth reserve proclamation could lead to ongoing uncertainty for potentially affected businesses if the government intended to revisit the proclamation following expiry of the six-month period during which a legislative instrument could not be resubmitted to the Parliament following its disallowance.