

Chapter 2

The scope of the EPBC Act

The objects of the Act

2.1 Currently, the objects of the Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
- (ca) to provide for the protection and conservation of heritage; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land- holders and indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.¹

2.2 The committee received evidence that one particular aspect of the wording of these objects presented both a legal flaw and a problem with regard to Australia's international commitments. The clauses within the objects that specifically refer to protecting the environment and heritage state that the Act must 'provide for' that protection. The committee heard evidence that these words substantially weaken the effect of the legislation.

2.3 Governance expert Mr Tom Baxter began by drawing attention to consideration by the courts of the use of the phrase 'provide for' in the context of a dispute regarding another aspect of the EPBC Act's operation: RFAs. During *Brown v Forestry Tasmania*,² the trial judge considered the implication of a section of the

¹ EPBC Act, s. 3(1).

² *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729.

Regional Forest Agreements Act 2002 which describes an RFA as an agreement that, amongst other things, 'provides for a comprehensive, adequate and representative reserve system...' and also 'provides for the ecologically sustainable management and use of forested areas in the region or regions' (emphasis added).

2.4 Baxter noted the judge's interpretation of the phrase 'provides for', which was accepted by the full court in the subsequent appeal.³ His Honour said:

The Commonwealth submits the phrase 'provides for' in the definition of RFA in the RFA Act does not mean 'requires' or 'establishes' in a legally enforceable manner. All that is relevantly required, according to the Commonwealth, is that the RFA establishes a structure or policy framework which facilitates or enables the creation or maintenance of a CAR Reserve System and the implementation of ESFM practices.

The Commonwealth notes the use of 'provides for' instead of 'provide' and refers to dictionary definitions of 'provides for' which emphasise the making of arrangements for, rather than the actual provision of, something.

The Commonwealth and Forestry Tasmania refer to the judgment of the Full Court of the Supreme Court of New South Wales in *Stocks and Parkes Investments Pty Ltd v The Minister* [1971] 1 NSWLR 932 ('*Stocks and Parkes Investments*') at 940, where the Court said: 'There is a great difference between the verb "provide" and the verb "provide for" or "make provision for" and it is this difference which gives a clue to the construction of cl. 16. The difference between "provide" and "provide for" is that the former means to give or to make available in fact, while the latter looks to the planning stage alone. You provide for a school site by "looking forward" and planning accordingly. You provide a school site by actually making it available.'

Consideration

I accept the submissions of the Commonwealth and Forestry Tasmania concerning the meaning of 'provides for'. I see no reason to doubt the analysis of the Full Court of the Supreme Court of New South Wales in *Stocks and Parkes Investments*.⁴

2.5 Baxter then pointed out that these words are used in the Act's objects (set out above). He argued that the Act ought to 'aim higher than to merely 'provide for'... the protection of the environment and heritage'.⁵ The Wilderness Society was likewise scathing of how the objects of the Act are constructed:

the EPBC promotes, provides for, assists, recognises, strengthens, adopts, enhances and includes various things, but does not actually protect or require protection of anything.⁶

³ *Forestry Tasmania v Brown* [2007] FCAFC 186, at paragraphs 71–73.

⁴ *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729, at paragraphs 195–198.

⁵ Mr Tom Baxter, *Submission 65*, p. 4.

⁶ The Wilderness Society, *Submission 51*, p. 5.

2.6 Other submitters agreed.⁷

2.7 It was also argued that the current objects of the Act fall short of Australia's international commitments. Australia is a signatory to the World Heritage Convention, which states that each signatory:

... recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

To ensure that effective and active measures are taken for the protection, conservation and preservation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country ... to take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage...⁸

2.8 Mr Baxter suggested that agreeing to the convention requires Australia 'to ensure' protection, conservation, etc, not merely 'provide for' them'.⁹

2.9 The committee also notes that the Productivity Commission, in its 2004 inquiry on native vegetation and biodiversity regulation, recommended that the goals of environmental legislation 'should be clearly specified in terms of desired environmental outcomes'.¹⁰ If the goal of the Act is to achieve environmental protection outcomes with regard to MNES, the committee can see merit in modifying the objects of the Act to state that directly.

Recommendation 1

2.10 The committee recommends that the objects of the Act be amended to remove the words 'to provide for' from section 3(1)(a) and 3(1)(ca).

⁷ Green Institute, *Submission 78*; WWF-Australia, *Submission 81*; Western Australian Forest Alliance, *Submission 88*; Professor Lee Godden, *Submission 92*; NPAC, *Submission 93*; CCACT, *Submission 94*.

⁸ Convention Concerning the Protection of the World Cultural and Natural Heritage. Adopted by the General Conference of UNESCO, 17th Session. Done at Paris, 16 November 1972. 1037 UNTS 151, 11 ILM 1367 (entered into force 17 December 1975). <http://whc.unesco.org/archive/convention-en.pdf> (accessed February 2009).

⁹ *Submission 65*, p. 6.

¹⁰ Productivity Commission, 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Report no. 29, Melbourne, p. xxxv.

Matters of national environmental significance

2.11 Chapter 4 of the Act establishes procedures for determining whether a proposed action requires environment impact assessment (EIA) and approval under the Act. It also establishes assessment process and procedures for approving proposed actions.¹¹

2.12 Approval under the EPBC Act is required:

for actions that have, will have or are likely to have a significant impact on a matter of NES [national environmental significance]; and for Australian Government actions that are likely to have a significant impact on the environment or the environment on Commonwealth land and actions on Commonwealth land that are likely to have a significant impact on the environment anywhere.¹²

2.13 A significant impact is:

an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is like to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.¹³

2.14 There are seven MNES protected under the Act:

- World Heritage properties;
- National Heritage places;
- wetlands of international importance;
- listed threatened species and ecological communities;
- migratory species protected under international agreements;
- Commonwealth marine areas; and
- nuclear actions (including uranium mines).¹⁴

2.15 MNES are also referred to as 'protected matters' or 'triggers'.

¹¹ *Submission 85*, p. 16.

¹² *Submission 85*, p. 16.

¹³ DEWHA, *About the EPBC Act, Glossary*, www.environment.gov.au/epbc/about/glossary.html (accessed 10 December 2008).

¹⁴ DEWHA, *What is protected under the EPBC Act*, www.environment.gov.au/epbc/protect/index.html (accessed 10 December 2008).

World Heritage properties and National Heritage places

2.16 The Act provides for the listing of natural, historic or Indigenous places that are of outstanding national heritage value as well as heritage places on Commonwealth lands and waters or under Australian Government control.¹⁵

2.17 A declared World Heritage property is an area that has been included in the World Heritage List or declared by the Minister to be a World Heritage property. The National Heritage List includes natural, historic and Indigenous places of outstanding heritage value.

2.18 Once a heritage place is listed under the Act, special requirements come into force to ensure that the values of the place will be protected and conserved. The Act provides for the preparation of management plans which set out the significant heritage aspects of the place and how the values of the site will be managed.

2.19 To date there are 17 places on the World Heritage List and some 79 National Heritage places listed.¹⁶

Wetlands of international importance

2.20 A declared Ramsar wetland is an area that has been designated under Article 2 of the Ramsar Convention¹⁷ or declared by the Minister to be a declared Ramsar wetland under the Act. The broad aims of the Ramsar Convention are to halt the worldwide loss of wetlands and to conserve those that remain through wise use and management. The Convention provides for international cooperation, policy making, capacity building and technology transfer.¹⁸

2.21 Under the Ramsar Convention a wide variety of natural and human-made habitat types, ranging from rivers to coral reefs, can be classified as wetlands. Wetlands include swamps, marshes, billabongs, lakes, salt marshes, mudflats, mangroves, coral reefs, fens, peat bogs, or bodies of water - whether natural or artificial, permanent or temporary. Water within these areas can be static or flowing;

¹⁵ DEWHA, *World Heritage properties and National Heritage places*, www.environment.gov.au/epbc/protect/heritage.html (accessed 27 January 2009).

¹⁶ DEWHA, *The National and Commonwealth Heritage Lists*, 1 Jan 2004 – 30 June 2008, Commonwealth of Australia, 2008, p. 7; DEWHA, *World Heritage properties and National heritage places*, www.environment.gov.au/epbc/protect/heritage.html (accessed 27 January 2009).

¹⁷ *The Convention on Wetlands of International Importance especially as Waterfowl Habitat*, an intergovernmental treaty adopted on 2 February 1972 in Ramsar, Iran; commonly referred to as the Convention on Wetlands or the Ramsar Convention.

¹⁸ DEWHA, *Ramsar Convention on Wetlands*, www.environment.gov.au/water/environmental/wetlands/ramsar/index.html (accessed 27 January 2009).

fresh, brackish or saline; and can include inland rivers and coastal or marine water to a depth of six metres at low tide. There are even underground wetlands.¹⁹

2.22 The Act establishes a process for identifying Ramsar wetlands and best practice management through nationally consistent management principles.²⁰ These principles have been set out in regulations and cover matters relevant to the preparation of management plans, environment assessment of actions that may affect the site, and the community consultation process. A management plan for a Ramsar wetland cannot be accredited unless it is in accordance with these principles. The principles may also be used for the management of any wetland throughout Australia.²¹

Listed threatened species and ecological communities

2.23 The Act provides for the listing of nationally threatened native species and ecological communities, native migratory species and marine special and protects.

2.24 The Act protects Australia's native species and ecological communities by providing for:

- identification and listing of species and ecological communities as threatened;
- development of conservation advice and recovery plans for listed species and ecological communities;
- development of a register of critical habitat;
- recognition of key threatening processes; and
- where appropriate, reducing the impacts of these processes through threat abatement plans.²²

2.25 Any person may nominate a native species, ecological community or threatening process for listing under any of the categories specified.

Migratory species protected under international agreements

2.26 Migratory species are those animals that migrate to Australia and its external territories, or pass through or over Australian waters during their annual migrations,

¹⁹ DEWHA, *Ramsar Convention on Wetlands*, www.environment.gov.au/water/environmental/wetlands/ramsar/index.html (accessed 27 January 2009).

²⁰ DEWHA, *Wetlands of international importance (Ramsar wetlands)*, www.environment.gov.au/epbc/protect/wetlands.html (accessed 27 January 2009).

²¹ DEWHA, *Australian Ramsar management principles*, www.environment.gov.au/water/environmental/wetlands/ramsar/management.html (accessed 27 January 2009).

²² DEWHA, *Listed threatened species and ecological communities*, www.environment.gov.au/epbc/protect/species-communities.html (accessed 27 January 2009).

and include mammals, birds, fish, reptiles and insects. Listed migratory species also include any native species identified in an international agreement approved by the Minister.

2.27 The national list of migratory species consists of species listed under the following International Conventions:

- Convention on the Conservation of Migratory Species of Wild Animals - (Bonn Convention)
- Japan-Australia Migratory Bird Agreement (JAMBA)
- China-Australia Migratory Bird Agreement (CAMBA).²³

Commonwealth marine areas

2.28 The Commonwealth marine area is any part of the sea, including the waters, seabed, and airspace, within Australia's exclusive economic zone and/or over the continental shelf of Australia, that is not state or Northern Territory waters. They stretch from 3 to 200 nautical miles from the coast and are areas which are recognised to have high conservation value.²⁴

Nuclear actions

2.29 Nuclear actions are:

- establishing or significantly modifying a nuclear installation;
- transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
- establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;
- mining or milling uranium ores, excluding operations for recovering mineral sands or rare earths;
- establishing or significantly modifying a large-scale disposal facility for radioactive waste. A decision about whether a disposal facility is large scale will depend on factors including:
 - the activity of the radioisotopes to be disposed of
 - the half-life of the material
 - the form of the radioisotopes
 - the quantity of isotopes handled;

²³ DEWHA, *Listed migratory species*, www.environment.gov.au/epbc/protect/migratory.html (accessed 27 January 2009).

²⁴ DEWHA, *Commonwealth marine areas*, www.environment.gov.au/epbc/protect/marine.html (accessed 27 January 2009).

- decommissioning or rehabilitating any facility or area in which an activity described above has been undertaken; or
- any other type of action set out in the EPBC Regulations.²⁵

Option for additional triggers

2.30 Section 25 of the Act provides a framework for recognising additional MNES through Regulations after consultation with the states and territories. There has been one new MNES established since the commencement of the Act: the environment of the Great Barrier Reef Marine Park.²⁶

Matters involving the Commonwealth

2.31 The Act also regulates actions, undertaken on Commonwealth land or outside of Commonwealth land, that are likely to have a significant impact on the environment of Commonwealth land, or are undertaken by the Commonwealth or a Commonwealth agency and are likely to have a significant impact on the environment anywhere in the world.²⁷

Are the 'triggers' in the Act adequate?

2.32 Since its enactment, concerns have been raised about the scope of the Act. For example, a number of submitters to the 2006 inquiry into the provisions of the Environment & Heritage Legislation Amendment Bill (No. 1) 2006, noted the need for additional triggers, in particular the impacts of greenhouse gas pollution, climate change, land clearing and water extraction.²⁸

2.33 A number of submitters to the current inquiry also raised concerns about the 'trigger' process in the Act.

2.34 ANEDO expressed its view that the Act gives the Commonwealth a limited and narrow role to intervene in decisions affecting a MNES.²⁹ It advocated the addition of new triggers as well as amendments to improve current matters of national

²⁵ DEWHA, *Nuclear actions*, www.environment.gov.au/epbc/protect/nuclear.html (accessed 27 January 2009).

²⁶ Schedule 4, *Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008*, Act No. 125, 2008.

²⁷ There are a number of exceptions: actions taken in accordance with a bilateral agreement or accredited Commonwealth approval process, the *Great Barrier Reef Marine Park Act 1975* or a regional forest agreement; authorised by a government decision on advice from the minister; or exempted by the minister on the basis of national interest.

²⁸ See Report on the provisions of the Environment & Heritage Legislation Amendment Bill (No. 1) 2006, Environment, Communications, Information Technology and the Arts Committee, 2006, pp 57–58.

²⁹ ANEDO, *Submission 90*, p. 5.

significance.³⁰ The Australian Conservation Foundation (ACF) likewise considered that new triggers for the application of the assessment and approval regime and improvements to existing triggers are required if the Act is to achieve its stated objectives and meet community expectations about an appropriate role for the Commonwealth in protecting our natural environment.³¹

2.35 While there were various proposals put forward to broaden the scope of the triggers in the Act, two were most prominent during the committee's current inquiry: greenhouse gas; and land clearing.³²

New 'triggers'

Climate change

2.36 In its submission, the National Parks Australia Council (NPAC) noted that the role of climate change and a greenhouse gas 'trigger' in the EPBC Act has been debated since the first EPBC Bill. NPAC suggested that the design and implementation of the current Act makes it difficult for the Act to address climate change:

Specifically the 'significant impact' test has proved a real obstacle given that even very large amounts of greenhouse emitted as a result of any single action in Australia will be 'a drop in the ocean' on the world stage. However that is not to say that the EPBC Act does not have the potential to make an impact on Australia's emissions.³³

2.37 NPAC offered two options for inserting a greenhouse gas trigger into the Act. The first was:

Listing climate as a Matter of National Environmental Significance. A direct trigger for the operation of the Act meaning that once a project will emit or cause to be emitted, a prescribed amount of Green House Gas (GHG) it is a controlled action. ...³⁴

2.38 Its second option was:

to insert a consideration requirement that at each stage of the decision making process the Minister consider the climate change impacts of the Action and its contribution to Australia's greenhouse gas emissions. This measure should allow for a more comprehensive range of conditions to be

³⁰ ANEDO, *Submission 90*, p. 41.

³¹ ACF, *Submission 52*, p. 22

³² See IFAW, *Submission 28*; ACF, *Submission 52*, Lawyers for Forests Inc, *Submission 68*; NPAC, *Submission 93*; Government of South Australia, *Submission 105*.

³³ NPAC, *Submission 93*, p. 36.

³⁴ NPAC, *Submission 93*, p. 37.

attached to approvals ... and if combined with a prescribed threshold may lead to better outcomes.³⁵

2.39 NPAC concluded that the combination of these two measures and the requirement that projects only be assessed for their contribution to Australia's greenhouse gas emissions would increase the scope of the Act to address action previously excluded and hopefully reduce the number of highly carbon intensive actions undertaken.³⁶

2.40 The Department of Defence indicated concern that the Act does not currently provide for direct responses to climate change, particularly where there is a need to balance competing priorities. For example, the increasing need to implement more energy efficient design and upgrades to facilities in response to the climate change agenda may have the potential to conflict with the priorities to conserve heritage or environmental values.³⁷

2.41 The ACF considered the lack of an explicit mechanism to regulate emissions of greenhouse gases (together referred to as 'carbon emissions') has been a widely acknowledged shortcoming of the Act since inception and welcomed current work in progress to develop a national emissions trading scheme ('ETS'), the Carbon Pollution Reduction Scheme ('CPRS').³⁸

2.42 The ACF acknowledged the current Government's policy platform that the inclusion of a 'climate change trigger' in the Act is an appropriate approach to planning processes and decisions.³⁹

2.43 The Wilderness Society also noted that the lack of a greenhouse gas trigger is a fundamental problem with the Act. However, it stated:

[a]ny climate change trigger which only works in the current framework of individual projects will be limited in its effectiveness, and should be altered to take account of the cumulative impacts of greenhouse gas emissions.⁴⁰

2.44 ANEDO recommended that the Act be amended to include a greenhouse gas trigger that any actions resulting in emissions over a specified level per year be recognised as a MNES and that all projects on a designated development list trigger approval provisions.⁴¹ Friends of the Earth were one of several other groups to recommend triggers based on specific emission values for proposed projects. They

³⁵ NPAC, *Submission 93*, p. 37.

³⁶ NPAC, *Submission 93*, p. 37.

³⁷ Department of Defence, *Submission 67*, p. 10.

³⁸ ACF, *Submission 52*, p. 23.

³⁹ ACF, *Submission 52*, p. 24.

⁴⁰ The Wilderness Society, *Submission 51*, p. 13.

⁴¹ ANEDO, *Submission 90*, p. 35.

recommended the Act be triggered for proposals that would produce over 100 000 tonnes of CO₂ equivalent per annum.⁴² WWF supported a trigger on the same basis.⁴³

2.45 The International Fund for Animal Welfare (IFAW) also suggested a greenhouse trigger. They proposed that such a trigger could not only examine greenhouse emissions impacts but also address impacts (both negative and positive) or carbon sinks.⁴⁴ The Conservation Council of South Australia (CCSA) argued that the trigger would need to take account of the cumulative impact of greenhouse gas emission increases.⁴⁵ Professor Godden agreed there should be such a trigger, as did the Planning Institute Australia.⁴⁶

2.46 The committee recognises that introducing a greenhouse gas trigger may have implications in the context of the CPRS, and that these must be carefully considered.

2.47 With respect to the need for a greenhouse gas trigger and the CPRS, Mr Andrew Walker suggested that the proposed opt-in scheme for forest industries under the CPRS, as detailed in the CPRS green paper, meant there was a need for a greenhouse trigger 'so that the actual impacts are assessed under the EPBC Act'.⁴⁷ However, Mr Walker also acknowledged that it was difficult to say exactly how a greenhouse gas trigger and the CPRS would interact on the basis that 'we do not know what the outcome of the green paper will be or what form the Carbon Pollution Reduction Scheme will take at this stage, so it is a bit premature to comment'.⁴⁸

2.48 The National Association of Forest Industries (NAFI) indicated that a CPRS scheme would suffice and that a greenhouse gas trigger under the Act was not necessary:

Already the government's objectives in relation to its obligations under the Kyoto protocol and its eventual successor are being manifested in the CPRS legislation. To have a trigger under the EPBC Act for yet another layer of examination, assessment and approval between Minister Garrett and Minister Wong is not necessarily a healthy situation in terms of efficient regulation.⁴⁹

⁴² Friends of the Earth Melbourne, *Submission 48*, p. 4.

⁴³ WWF-Australia, *Submission 81*, p. 18.

⁴⁴ IFAW, *Submission 28*, p. 6.

⁴⁵ CCSA, *Submission 89*, p. 9.

⁴⁶ Professor Lee Godden, *Submission 92*, p. 6; Planning Institute Australia, *Submission 104*.

⁴⁷ Mr Andrew Walker, Lawyers for Forests Inc., *Committee Hansard*, 8 December 2008, p. 27.

⁴⁸ Mr Andrew Walker, Lawyers for Forests Inc., *Committee Hansard*, 8 December 2008, p. 30.

⁴⁹ Mr Shane Gilbert, Strategic Advisor, National Association of Forest Industries, *Committee Hansard*, 18 February 2009, p. 10.

Land clearing

2.49 Land clearing is already recognised by the Commonwealth as a key threatening process. Given the consequences of land clearing, which ANEDO noted include the destruction of biodiversity habitat, degradation of soil, degradation of water quality, increased salinity, release of greenhouse gas emissions, ANEDO recommended that a comprehensive land clearing trigger be included in the Act. While some States have legislation regulating land clearing, ANEDO considered the Commonwealth should have a role in assessing impacts of significant clearing proposals.⁵⁰

2.50 The ACF considered that existing triggers under the Act do not adequately capture land clearing activities which, in recent years, have had devastating impact upon biodiversity and salinity and are a significant contributor to Australia's carbon emissions.⁵¹

2.51 ACF considered that a proposal put forward by ANEDO offered a sound basis for approaching this issue:

... an approach to land clearance/native vegetation triggers based on three elements: (i) a generally applicable area threshold for clearance of native vegetation; (ii) a trigger for clearance of vegetation that provides habitat for listed threatened species or ecological communities or listed critical habitat; and (iii) a schedule of activities involving general land clearance (eg. major coastal developments) that would trigger the A&A regime.⁵²

Conclusion

2.52 The committee notes the longstanding preference of many stakeholders for increasing the scope of the Act through the inclusion of additional MNES. These views have been expressed repeatedly over the years, including to the inquiry into the 2006 amendments to the Act conducted by the predecessor to this committee. There are at least two distinct ways in which new triggers could be included in the Act: by an additional regulation under section 25; or through inserting new sections under Part 3, Division 1 of the Act.

2.53 At all stages, greenhouse gas emissions and land clearing have been the dominant issues of concern. The committee is in principle supportive of the objective of broadening the scope of operation of the Act in these areas. There are some issues that must be dealt with in seeking the most appropriate way in which to proceed.

2.54 As will be noted in chapter three, currently both greenhouse gas emissions and land clearing are registered under the Act as key threatening processes. They have

⁵⁰ ANEDO, *Submission 90*, pp 38–39.

⁵¹ ACF, *Submission 52*, p. 25.

⁵² ACF, *Submission 52*, p. 25, and see ANEDO, *Submission 90*, p. 39.

been on the books since 2001, yet in neither case has a threat abatement plan been developed. As a result, neither issue is being actively considered under EPBC Act processes. The committee suggests that the minister seek the advice of the Threatened Species Scientific Committee about the introduction of a threat abatement plan for land clearance.

2.55 The committee is aware that there are other policy processes underway that are intended to have a direct bearing on both problems. With regard to land clearing, the committee is aware that all Australian governments are currently participating in a review of the *National Framework for the Management and Monitoring of Australia's Native Vegetation*. This review is scheduled to report at the end of 2009.⁵³ With regard to greenhouse gas emissions, the Commonwealth is currently planning for the implementation of an emissions trading system, as well as presiding over other policies as part of its CPRS. None of the submitters addressed the issue of how a greenhouse gas trigger would mesh with an emissions trading scheme.

2.56 The committee notes that the proposed CPRS will define the government's primary framework for action on climate change and accordingly, the role, scope and operation of a greenhouse gas trigger in the Act would need to be considered in light of the final design of that scheme. This will ensure that Australia's climate change response is coherent, as well as economically and environmentally sound.

2.57 The independent review of the Act has sought submissions on whether the Act provides an appropriate legislative framework for addressing climate change in the context of environmental protection and biodiversity conservation. The report of that review is to be provided to the minister by 31 October 2009.

Recommendation 2

2.58 The committee recommends that the appropriateness of a greenhouse trigger under the Act and the nature of any such trigger, should it be required, be carefully considered in light of the findings of the independent review and in the context of the government's overall response to climate change, in particular the CPRS.

Recommendation 3

2.59 The committee recommends that, having regard to the conclusions of the review of the *National Framework for the Management and Monitoring of Australia's Native Vegetation* currently underway, and in light of advice from the Threatened Species Scientific Committee, the government should consider including a land clearing trigger in the Act.

⁵³ DAFF, *Submission 86*, p. 4.

