



**Australian Government**

**Department of the Environment, Water, Heritage and the Arts**

---

**Senate Standing Committee on Environment,  
Communication and the Arts**

**Inquiry into the Operation of the  
*Environment Protection and Biodiversity Conservation Act 1999***

**Submission by  
the Australian Government Department of the Environment,  
Water, Heritage and the Arts**

# INTRODUCTION

---

The Australian Government Department of the Environment, Water, Heritage and the Arts (DEWHA) welcomes the opportunity to make a submission to the Senate Standing Committee on Environment, Communications and the Arts for the purposes of its Inquiry into the Operation of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

For the purpose of assisting the Senate Committee with its inquiry, this submission highlights both:

- **regulation** for to environment protection and biodiversity conservation– including administration and implementation of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations), and
- **environmental programs** – which include the Caring for our Country initiative and other activities which fall outside strict administration of the provisions of the EPBC Act.

## **Administration of the EPBC Act**

DEWHA develops and implements national policy, programs and legislation for the protection, conservation and sustainable use of Australia's natural environment, water resources and cultural heritage. It has primary responsibility for administering the EPBC Act and for the development and implementation of policies underpinning the EPBC Act. DEWHA also manages environmental assessment and approval processes under other Commonwealth laws, particularly the *Environment Protection (Sea Dumping) Act 1981*, the *Sea Installations Act 1987* and the *Antarctic Treaty (Environment Protection) Act 1980*, and administers a suite of regulations including the EPBC Regulations.

## **Structure of this Submission**

This submission is divided into two parts which respectively deal with environmental regulation under the EPBC Act and environmental programs.

### Part 1

Part 1 of this submission provides an overview of the EPBC Act, including an outline of the history behind the development of the Act and an explanation of how the Act operates to achieve its objects. The discussion focuses on four broad categories of provisions under the EPBC Act:

1. environmental impact assessment and approvals process
2. biodiversity conservation
3. protected areas, and
4. compliance and enforcement.

Part 1 refers to the findings of the Australian National Audit Office (ANAO), as set out in Audit Report No.38 of 2002-03, *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999* and referred to in paragraph 2(a) of the Terms of Reference for this Inquiry.

In 2006-07, the ANAO also undertook another performance audit to assess DEWHA's administration of the EPBC Act. The findings from this audit were reported in Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*. In this Report, the ANAO made a number of recommendations, all of which DEWHA has accepted.

Following release of the 2006-07 Audit Report, DEWHA secured additional funding to administer the EPBC Act. These resources have been applied to address the issues identified by the ANAO and others. In summary, DEWHA has:

- increased resources to the assessment of projects triggering the EPBC Act, with the objective of improving the timeliness of decision-making under the Act
- created a dedicated Compliance and Enforcement Branch
- established a targeted project auditing strategy and instigated a post-approvals monitoring program to ensure projects are implemented as designed and in accordance with any approval conditions
- created two sections to facilitate and provide the uptake of strategic assessment approaches
- increased resources to the listing of threatened species and ecological communities
- increased the production of policy statements to provide better information to the public and local governments about the application of the 'significance' test under the EPBC Act, and
- increased resources dedicated to the development of recovery plans and recovery actions, which has included accelerating the preparation of conservation advices for listed threatened species under the Act.

Part 1 of this submission also provides information about the provisions of the EPBC Act for the protection of critical habitats of threatened species and ecological communities and the listing of key threatening processes under the Act (referred to in paragraphs 2(b) and (d) of the Terms of Reference for this Inquiry). The information provided about climate change, which is referred to in paragraphs 1 and 2(d) of the Terms of Reference for this Inquiry, has been prepared in consultation with the Australian Government Department of Climate Change (DCC).

Part 1 of this submission outlines the environmental impact assessment and approval regime established under the EPBC Act and provides statistics on the application of this aspect of the Act. It also describes processes for the development of strategic assessments, bioregional plans and conservation agreements (paragraph 2(c) of the Terms of Reference for this Inquiry). Information provided about the interaction between the EPBC Act and Regional Forestry Agreements has been prepared in consultation with the Department of Agriculture, Fisheries and Forestry (DAFF).

General statistics on the operation of the EPBC Act are also provided in Part 1 of this submission, including statistics on compliance and enforcement actions taken under the EPBC Act.

## Part 2

Part 2 of this submission provides information about relevant Australian Government natural resource protection programs administered by DEWHA. In particular, it discusses DEWHA's role in administering:

- Caring for our Country
- Envirofund, and
- the Environmental Stewardship program.

All of the above programs are specifically identified in paragraph 2(f) of the Terms of Reference for this Inquiry.

Information has also been provided on the Landcare Program, which forms part of the Caring for our Country program as is also specifically referred to in paragraph 2(f) of the Terms of Reference for this Inquiry. This information was prepared in consultation with DAFF, which is responsible for administering this part of the Caring for our Country program.

DEWHA does not administer the Green Corps program, which is also referred to in paragraph 2(f) of the Terms of Reference. As such, information has not been provided on this program in this submission.

Information is also provided on a range of initiatives administered by DEWHA relevant to environmental protection and biodiversity conservation. These are initiatives that are not captured through DEWHA's administration of the EPBC Act or the natural resource protection programs referred to in the Terms of Reference for this Inquiry.

## **Terms of Reference**

Further specific references to the Terms of Reference for this Inquiry are made throughout this submission where relevant.

# **PART 1**

## **THE EPBC ACT FRAMEWORK**

This Part of the submission is divided into six Chapters which provide background on the development of the EPBC Act and explain:

- the basic framework established by the EPBC Act
- the environmental impact assessment and approvals regime under the EPBC Act
- biodiversity conservation
- the management of protected areas, and
- compliance and enforcement activities under the EPBC Act.

Part 1 of the submission also provides statistics about activities undertaken by DEWHA in administering the EPBC Act and EPBC Regulations, including activities taken by DEWHA to respond to recommendations made by the ANAO.

## 1. BACKGROUND TO THE EPBC ACT

---

The past eight years have seen the implementation of a major reform to the role of the Commonwealth in environmental issues.

### 1.1 Constitutional Framework

Environmental matters are not the sole responsibility of any particular level of government, but are shared between the Commonwealth, State and Territory and Local governments.

Under the Australian Constitution, powers are divided between the Australian Government and the State and Territory governments. Where the Constitution does not specifically state that a power in respect of a matter is conferred on the Commonwealth, the matter is general regarded as a State responsibility.

Environmental matters are not specifically mentioned in the Constitution. As such, the States and Territories are generally regarded as having responsibility for these matters. However, the Commonwealth retains significant powers that can be, and have been, used to make laws about environmental matters, for example, the trade and commerce power, and powers related to external affairs, trading corporations and people of any race.<sup>1</sup>

### 1.2 Why was the EPBC Act developed?

#### 1.2.1 The 1992 Agreement

In 1992, the Council of Australian Governments (COAG) concluded an Intergovernmental Agreement on the Environment (IGAE) which established a framework for intergovernmental consultation on environmental issues. Under the IGAE, the Australian Government and all State and Territory governments agreed to integrate environmental considerations into their decision-making and pursue the principles of 'ecologically sustainable development'.

The IGAE also articulated principles of environmental policy that the governments agreed should guide the development and implementation of environmental policy and programs, including the adoption of sound environmental practices and procedures as a basis for 'ecologically sustainable development'.

#### 1.2.2 The 1997 Agreement

In recognition of a need to act substantively on the aspirations of the IGAE, in 1996 COAG initiated a major review of the environmental roles and responsibilities of the Australian Government and the State and Territory governments. The outcome of the

---

<sup>1</sup> *Constitution of the Commonwealth of Australia*, s.51.

review was formally approved by the Prime Minister, Premiers and Chief Ministers in 1997 in the form of the 'COAG Heads of Agreement on Commonwealth / State Roles and Responsibilities for the Environment' (1997 Agreement).

A review of Commonwealth environmental legislation followed. Key aspects of the review were to promote the concept of 'ecologically sustainable development' within new legislation and focus the Australian Government's role on matters of national environmental significance.

### 1.2.3 Development of the EPBC Act

Fundamental changes to Commonwealth environmental legislation were required in order to give effect to the 1997 Agreement and the findings from the Commonwealth legislative review. These changes were implemented through the development of the EPBC Act, which commenced on 16 July 2000.

## **1.3 International obligations underpinning the Act**

The EPBC Act implements Australia's obligations under a number of international Conventions, including:

- the *Convention on Wetlands of International Importance especially as Waterfowl Habitat* done at Ramsar on 2 February 1971 (Ramsar Convention)
- the *Convention Concerning the Protection of the World Cultural and Natural Heritage* done at Paris on 23 November 1972 (World Heritage Convention)
- the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* done at Washington on 3 March 1973 (CITES)
- the *Convention on the Conservation of Migratory Species of Wild Animals* done at Bonn on 23 June 1979 (Bonn Convention), and
- the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992 (Biodiversity Convention).

## **1.4 How has the EPBC Act developed?**

The EPBC Act has evolved since its commencement in July 2000 and the scope of the Act has expanded. In addition to providing an environmental protection and biodiversity conservation regime, the Act also now includes provisions for regulating wildlife trade and the management and protection of heritage values. Refinements have also been made to the EPBC Act to strengthen and streamline the compliance and enforcement provisions in the Act.

There have been a number of amendments made to the EPBC Act since it commenced in 2000. These fall into two broad categories:

1. those which broadened or altered the scope of the environmental protection and conservation regimes provided under the Act—the main amendments are discussed below, and
2. those which were technical or consequential in nature.

#### 1.4.1 2001 amendments to the EPBC Act

The *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001* inserted a wildlife protection regime into the EPBC Act.<sup>2</sup> The regime is directed at regulating the international movement of wildlife specimens into and out of Australia.

#### 1.4.2 2003 amendments to the EPBC Act

The *Environment and Heritage Legislation Amendment Act (No.1) 2003* amended the EPBC Act to insert a Commonwealth heritage management regime focused on matters of national significance and Commonwealth responsibility. In summary the amendments provided a process for recognising and managing places of national and Commonwealth heritage and required consideration about the Indigenous heritage values present in Commonwealth or national heritage places.

#### 1.4.3 2006 amendments to the EPBC Act

The *Environment and Heritage Legislation Amendment Act (No. 1) 2006* made a large number of amendments to the EPBC Act including amendments aimed at making the Act more efficient and effective, providing incentives for greater engagement in strategic approaches under the Act and strengthening compliance and enforcement mechanisms under the Act.

### **1.5 Resources for administering the EPBC Act**

In recent years, DEWHA has received additional levels of funding which has improved its ability to administer the EPBC Act effectively. The 2008-09 Budget continued this increased level of funding for the current financial year.

---

<sup>2</sup> EPBC Act, Part 13A—'International movement of wildlife specimens'.



## **2. FRAMEWORK ESTABLISHED BY THE EPBC ACT**

---

The EPBC Act establishes a national approach to a wide range of environmental protection and biodiversity conservation matters. It places the Commonwealth Minister for the Environment, Heritage and the Arts at the centre of national decision-making on matters impacting on Australia's environment.

The Act codifies the role of the Australian Government in protecting matters of national environmental significance and regulating actions involving the Commonwealth or on or affecting Commonwealth land. It is also the primary tool for regulating wildlife trade and managing and protecting heritage values at the Federal level and represents a significant improvement on the previous regime where the Commonwealth's environmental assessment and approval process was triggered only in an 'ad hoc' fashion by factors not necessarily related to environment or wildlife concerns.

### **2.1 Commonwealth and State / Territory responsibility**

One of the objectives for developing the EPBC Act was to facilitate a nationally consistent approach to environmental matters. This objective is consistent with the IGAE.

The Act defines clear and distinct roles for the different levels of Government. These roles also mirror those identified in the 1997 Agreement:

- The Australian Government has responsibility for:
  - its own activities and activities on its land and places, and
  - matters of 'national environmental significance', and
- The State and Territory governments are responsible for matters of state, regional and local significance.

The EPBC Act provides an enhanced capacity for cooperation between the Australian Government and the State and Territory and Local governments by facilitating the conclusion of bilateral agreements under which the Australian Government can accredit State and Territory assessment and approval processes. Cooperation is also enhanced by the Australian Government's commitment to streamlining environmental assessment and approval processes and a move towards the use of strategic environmental assessments<sup>3</sup> – all of which are also facilitated under the EPBC Act.

### **2.2 Summary of matters covered by the EPBC Act**

The EPBC Act is the premier piece of Commonwealth environmental legislation. It seeks to protect and manage Australia's environment which includes nationally and

---

<sup>3</sup> As seen through the Australian Government's contribution to COAG's Business Regulation and Competition Working Group (BRCWG).

internationally important flora, fauna, ecological communities and heritage places. It also regulates the import and export of wildlife specimens into and out of Australia and provides a regime for penalising and deterring breaches of the Act by subjecting breaches to possible criminal and civil penalties.

The EPBC Act covers four main areas:

1. *Environmental Impact Assessment*—this involves assessment and approval of:
  - activities by the Commonwealth or Commonwealth agencies, or activities on or affecting Commonwealth land, and
  - activities that have, will have or are likely to have, a significant impact on matters of ‘national environmental significance’ (NES)
2. *Biodiversity Conservation*—this primarily involves:
  - listing, management, protection and conservation of threatened species and ecological communities, migratory and listed marine species, and
  - the ecologically sustainable and humane management of international trade in wildlife specimens
3. *Protected Areas*—this includes the management and protection of world, national and Commonwealth heritage values, Ramsar wetlands, biosphere reserves and Commonwealth reserves and conservation zones, and
4. *Administrative and miscellaneous matters*—in particular, compliance and enforcement provisions.

The principles of ecologically sustainable development including the precautionary principle underpin the framework established by the EPBC Act.

### 2.2.1 Ecologically sustainable development

A key motivation for developing the EPBC Act was to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.

The concept of ‘ecologically sustainable development’ finds its origins in the *Brundtland Report*,<sup>4</sup> where development was defined as sustainable “if it meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>5</sup> The IGAE committed all Australian governments to the concept of ecologically sustainable development as a general principle of environmental policy and for the purposes of assessments of natural resources, land-use decisions and approval processes.<sup>6</sup>

A broad approach to sustainability is encouraged by the EPBC Act’s definition of ‘environment’, which includes:

- Ecosystems and their constituent parts, including people and communities
- Natural and physical resources
- The qualities and characteristics of locations, places and areas

---

<sup>4</sup> Report of the World Commission on Environment and Development entitled ‘*Our Common Future*’ (1987).

<sup>5</sup> Ibid, page 8.

<sup>6</sup> IGAE, Schedule 2.

- Heritage values of places, and
- The social, economic and cultural aspects of ecosystems, resources, locations, places and areas.<sup>7</sup>

Section 3A of the EPBC Act defines the principles of ecologically sustainable development for the purposes of the Act. In summary these are:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation – this is known as ‘the precautionary principle’
- (c) the principle of inter-generational equity--that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making, and
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

The principles of ecologically sustainable development must be considered when making decisions about whether to approve an action under Part 9 of the EPBC Act.

### 2.2.2 Precautionary principle

The EPBC Act also requires consideration of ‘the precautionary principle’ when certain decisions are made under the Act to the extent that consideration is consistent with other provisions of the Act. The precautionary principle, as specified in subsection 3A(b) and subsection 391(2) of the EPBC Act, is that lack of scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

## **2.3 Basic structure of the EPBC Act**

The EPBC Act is organised into a number of Chapters. The first Chapter defines the objects of the Act, which are:

- to provide for the protection of the environment, especially those aspects of the environment that are matters of NES
- to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources
- to promote the conservation of biodiversity
- to provide for the protection and conservation of heritage
- to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and Indigenous peoples

---

<sup>7</sup> EPBC Act, s.528.

- to assist in the co-operative implementation of Australia's international environmental responsibilities
- to recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, and
- to promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.<sup>8</sup>

### 2.3.1 Matters of NES

Chapter 2 of the Act identifies the matters of NES:

- World Heritage – in particular, the world heritage values of a property
- National Heritage – in particular, the national heritage values of a place
- Wetlands of international importance – specifically, wetlands listed under the Ramsar Convention and in particular, the ecological character of such wetlands
- Threatened species and ecological communities listed under the Act
- Migratory species listed under the Act
- Nuclear actions,<sup>9</sup> and
- The Commonwealth marine environment.

The EPBC Act also provides a framework for recognising additional matters of NES through Regulations after consultation with the States and Territories.<sup>10</sup> A Bill currently before the Parliament proposes to establish the environment of the Great Barrier Reef Marine Park as a new matter of NES.<sup>11</sup>

### 2.3.2 Matters involving the Commonwealth

Chapter 2 of the EPBC Act regulates “matters involving the Commonwealth”. The EPBC Act seeks to protect the environment by regulating:

- actions taken on Commonwealth land that have, will have or are likely to have a significant impact on the environment
- actions taken outside of Commonwealth land that have, will have or are likely to have a significant impact on the environment on Commonwealth land
- actions taken outside Australia that have, will have or are likely to have a significant impact on the environment in a Commonwealth heritage place overseas, and
- actions taken by the Commonwealth or Commonwealth agencies that have, will have or are likely to have significant impact on the environment inside or outside Australia.

---

<sup>8</sup> EPBC Act, s.3(1)(a)-(g).

<sup>9</sup> Including uranium mining, transport of nuclear fuel and waste, construction and operation of a nuclear power plant, storage/disposal of nuclear waste – see EPBC Act, s.22.

<sup>10</sup> EPBC Act, s.25.

<sup>11</sup> Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008.

## 2.4 How does the EPBC Act work to protect the environment?

In summary, the EPBC Act seeks to protect the environment by prohibiting actions that have not been approved or authorised under the EPBC Act, and which:

- have, will have or are likely to have a ‘significant impact’ on a matter of NES
- are taken on Commonwealth land and have, will have or are likely to have a ‘significant impact’ on the environment, or
- are proposed to be taken by the Commonwealth or a Commonwealth agency and have, will have or are likely to have a ‘significant impact’ on the environment.

The EPBC Act contains a number of circumstances where actions do not require approval under the Act, including where the action:

- is authorised by an approvals bilateral agreement or a declaration made by the Minister pursuant to section 33 of the Act
- is taken in accordance with an alternative environmental management regime established under the Act – these regimes include strategic assessments, bioregional plans, conservation agreements, forestry operations that fall within a regional forest agreement and the specific permissions in place for actions taken in the Great Barrier Reef Marine Park, or
- has prior authorisation or is a lawful continuation of use.<sup>12</sup>

The Minister may also exempt actions from the requirement for approval under the EPBC Act where:

- the Minister is satisfied that it is in the national interest to do so<sup>13</sup>
- the action is undertaken by a Commonwealth agency and the Minister is satisfied that the action or class of actions are:
  - necessary in the interests of Australia’s defence or security
  - necessary in preventing, mitigating or dealing with a national emergency, or
  - subject to State or Territory environment protection laws which are considered to provide adequate protection for protected matters.<sup>14</sup>

For actions requiring approval, the environmental assessment and approval process is set out in Chapter 4 of the EPBC Act. Substantial penalties can apply for taking actions without approval or authorisation— civil penalties of up to \$5.5 million or criminal penalties of up to 7 years imprisonment. Further information on the environmental assessment and approval processes under the EPBC Act is provided below in Chapter 3 of this submission.

### 2.4.1 Matters of NES

Division 1 of Part 3 of the EPBC Act provides protection for matters of NES.

---

<sup>12</sup> EPBC Act, s.43A and 43B

<sup>13</sup> EPBC Act, s.158.

<sup>14</sup> EPBC Act, s.28(3)-(5).

The EPBC Act requires persons who propose to take an 'action' that has, will have or is likely to have an adverse 'significant impact' on a matter of NES, and the taking of the action is not otherwise authorised under the EPBC Act (for example, pursuant to a Ministerial declaration made under the Act) to refer that action to the Minister for a decision on whether environmental assessment and approval is required under the Act.

#### 2.4.2 Matters involving Commonwealth land

Division 2 of Part 3 of the EPBC Act provides for protection of the environment from actions taken on Commonwealth land, and protection of the environment on Commonwealth land.

'Commonwealth land' is defined in section 27 of the EPBC Act, having reference to sections 24 and 525 of the Act, to include:

- (a) land owned by the Commonwealth or a Commonwealth agency (including land owned in Norfolk Island) and airspace over the land
- (b) an area of land held under lease by the Commonwealth or a Commonwealth agency (including an area held under lease in Norfolk Island) and airspace over the land
- (c) land in:
  - (i) an external Territory (except Norfolk Island), or
  - (ii) the Jervis Bay Territoryand airspace over the land
- (d) the coastal sea of Australia or an external Territory
- (e) the continental shelf, and the waters and airspace over the continental shelf
- (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters, and
- (g) any other area of land, sea or seabed that is included in a Commonwealth reserve.

'Commonwealth land' does not include Commonwealth marine areas, Territory Land in the Australian Capital Territory, or the coastal waters of the States or the Northern Territory.

#### 2.4.3 Commonwealth actions

Division 2 of Part 3 of the EPBC Act also seeks to protect the environment by regulating actions that are proposed to be taken by the Commonwealth and Commonwealth agencies.

The EPBC Act prohibits the Commonwealth and Commonwealth agencies from taking an 'action' that has, will have or is likely to have a 'significant impact' on the environment inside or outside the Australian jurisdiction unless the Minister has approved the taking of the action, or the taking of the action is otherwise authorised under the EPBC Act (for example, under a Ministerial declaration).

#### 2.4.4 What is an 'action'?

'Action' is defined broadly in section 523 of the EPBC Act and includes a project, development, undertaking, activity or a series of activities or an alteration of any of these things.

By way of example, actions include:

- the construction, expansion, alteration or demolition of buildings, structures, infrastructure or facilities
- storage or transport of hazardous materials
- waste disposal
- earthworks; impoundment, extraction and diversion of water, and
- clearance of vegetation.

Decisions by government bodies to grant an authorisation, such as a permit or a licence, or provide funding are not actions under the EPBC Act.

An action may have both beneficial and adverse impacts on the environment, however only adverse impacts on matters of NES are relevant when determining whether approval is required under the EPBC Act.

#### 2.4.5 What is a 'significant impact'?

'Impact' is defined in section 527E of the EPBC Act to include both direct and indirect consequences of an action. 'Significant impact' is not defined in the EPBC Act. However, a number of judicial decisions have provided a workable definition of 'significant impact' which is now reflected in administrative Policy Statements issued by the Department.

The Policy Statements provide that 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 likely 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.<sup>15</sup>

#### 2.4.6 When is a significant impact likely?

To be 'likely', it is not necessary for a significant impact to have a greater than 50 per cent chance of happening. Rather, it is sufficient if a significant impact on the environment is a real or not remote chance or possibility. If there is scientific uncertainty about the impacts of an action and potential impacts are serious or irreversible, the precautionary principle is applicable.<sup>16</sup> A lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment.

---

<sup>15</sup> EPBC Act Policy Statement 1.1, '*Significant Impact Guidelines: Matters of national environmental significance*', May 2006.

<sup>16</sup> EPBC Act, s.3A(b) and s.391.

Further information about the assessment and approvals processes under the EPBC Act is provided in Chapter 3 of this submission.



### 3. ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND APPROVAL

---

Chapter 4 of the EPBC Act establishes procedures for determining whether a proposed action requires environmental impact assessment and approval under the Act. It also establishes assessment process under the EPBC Act and the procedures for approving proposed actions under the Act.

As explained above, 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; 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. The matters of NES, matters involving the Commonwealth and matters on or affecting Commonwealth land are referred to collectively as ‘protected matters’.

Parts 7, 8 and 9 in Chapter 4 of the EPBC Act provide the referral, assessment and approval processes, including methods for assessing the environmental impacts of a proposed action on a protected matter and the framework for making decisions about whether to approve an action under the Act. Parts 7, 8 and 9 adopt a case-by-case approach to environmental impact assessment and approval. Part 10 of Chapter 4 provides for strategic assessments, which are discussed at paragraph 3.7 of this submission.

#### 3.1 The EIA regime under the EPBC Act – referrals of proposed actions

The Commonwealth EIA regime established under Chapter 4 of the EPBC Act sets out criteria for determining whether an action should be subject to EIA.

The starting point in the impact assessment process under the EPBC Act is the referral of a proposal to take an action that is likely to have a significant impact on a protected matter, known under the Act as an assessment of whether the proposed action is a ‘controlled action’.

The purpose of the referral process is to determine whether or not a proposed action will need formal environmental impact assessment and approval under the EPBC Act.

The referral documentation identifies the person proposing to take the action and includes a brief description of the proposed action, including the location, the nature and extent of any potential impacts, and any proposed mitigation measures. The form and content of referrals is specified in the EPBC Regulations.<sup>17</sup>

The onus to refer an action rests on the person proposing to take the action.<sup>18</sup> That person can be a natural person, company, State or Territory Government or an Australian Government agency that has administrative responsibility for the proposed

---

<sup>17</sup> EPBC Act, s.72 and Part 4 of the EPBC Regulations.

<sup>18</sup> EPBC Act, s.68.

action. While the EPBC Act is clear in placing the onus for referring a proposed action on the person proposing to take the action, the Minister also has the power to request that a proposed action be referred under the Act, and if the action is not referred, to deem that the action has been referred.<sup>19</sup>

A number of Policy Statements have been issued by the Department to assist persons proposing to take an action to make decisions about whether an action is likely to have a significant impact on a protected matter and should be referred under the Act.<sup>20</sup>

Following receipt of a referral, the Minister has 20 business days to decide if the proposed action triggers the EPBC Act and requires formal environmental impact assessment and approval under the Act.

Referrals are publicly notified on the DEWHA website and public submissions are invited ([www.environment.gov.au/epbc/notices/index.html](http://www.environment.gov.au/epbc/notices/index.html)).

The referral documentation and submissions received during the public comment period are the principal source of information considered by the Minister (or delegate) when making decisions about whether a referred action requires assessment under the EPBC Act, however further information can also be requested.<sup>21</sup> Public submissions must be considered when making referral decisions.

There are four options available to the decision-maker when deciding whether an action is likely to have a significant impact on a protected matter and requires formal environmental impact assessment and approval under the EPBC Act. These are:

- *Not controlled action* – if the proposed action is not likely to have a significant impact on a protected matter, approval is not required under the Act. In such cases the action can proceed subject to any other legislative requirements including state or local government requirements. The person proposing to take the action will not contravene the EPBC Act if the action is then taken in accordance with the decision and in line with any measures or undertakings specified in the referral documentation.
- *Not controlled action 'particular manner'* – if the proposed action is not likely to have a significant impact on a protected matter if undertaken in a particular manner, approval is not required under the Act if the action is taken in accordance with the specified particular manner. The action can proceed subject to any state or local government requirements.
- *Controlled action* – if the proposed action is likely to have a significant impact on a protected matter, it is a 'controlled action' and will require approval under the EPBC Act. The protected matters on which the proposed action may have a significant impact are referred to as 'controlling provisions'. The Minister also designates a person as the 'proponent' of the action.

---

<sup>19</sup> EPBC Act, s.70.

<sup>20</sup> These statements include EPBC Act Policy Statement 1.1, '*Significant Impact Guidelines: Matters of national environmental significance*', May 2006; Policy Statement 1.2, '*Significant Impact Guidelines: Actions on, or impacting upon, Commonwealth Land and actions by Commonwealth Agencies*', May 2006

<sup>21</sup> EPBC Act, s.76.

- *Clearly unacceptable* – if it is clear to the decision-maker that the proposed action would have unacceptable impacts on a protected matter, the action cannot proceed. Such actions will not be considered for approval under the EPBC Act.<sup>22</sup>

Decisions about referred actions are communicated to proponents and are also made available on the DEWHA website. There is also a process for the proponent to request reconsideration of these decisions under the EPBC Act.<sup>23</sup>

A diagrammatic representation of the referral process is provided at **Attachment A** of this submission.

When a referred action is determined to be a ‘controlled action’, the environmental impact assessment approach will also need to be determined.<sup>24</sup> This decision is generally made at the same time as the referral/controlled action decision. Further information about the approaches to EIA available under the EPBC Act is provided below (see paragraph 3.2 of this submission).

A discussion about compliance and enforcement activities undertaken in respect of controlled action decisions appears at Chapter 6 of this submission.

### 3.1.1 Referred proposals – statistics on controlled action decisions

Since commencement of the EPBC Act until 30 June 2008, DEWHA has received 2,696 referrals.<sup>25</sup> Of these referrals, 73 were withdrawn or lapsed prior to a decision on whether the proposed action was a ‘controlled action’ for the purposes of the EPBC Act.

Over this period, 2,567 decisions have been made on referred proposed actions. Of these decisions:

- 603 actions were found to be controlled actions and required approval under the EPBC Act
- 446 actions were found to be not a controlled action provided the action was taken in a particular manner, and accordingly did not require approval under the EPBC Act provided the action was taken in the specified particular manner
- 1,517 actions were found to be not a controlled action and accordingly did not require approval under the EPBC Act, and
- 1 action was found to be clearly unacceptable.

The 5 most common categories of referred actions since commencement of the Act in July 2000 until 30 June 2008 were:

- residential development (425 referrals, or 16 per cent of total referrals)

---

<sup>22</sup> EPBC Act, in particular Chapter 4, Part 7, Divisions 1A and 2.

<sup>23</sup> EPBC Act, s.78.

<sup>24</sup> EPBC Act, s.87.

<sup>25</sup> Please note that all figures in this section of Chapter 3 are from 16 July 2000 (the date of the EPBC Act’s commencement) to 30 June 2008, unless noted otherwise.

- transport, both on land and water (307 referrals, or 11 per cent of total referrals)
- exploration of minerals, oil and gas (263 referrals, or 10 per cent of total referrals)
- energy generation and supply, from both renewable and non-renewable sources (255 referrals, or 10 percent of total referrals), and
- commercial development (245 referrals, or 9 per cent of total referrals).

Over this period, the most common reason for a referred action being declared a controlled action, and thereby triggering the requirement for approval under the EPBC Act, is where the action is likely to have a significant impact on a listed threatened species or ecological community. Likely significant impacts on listed migratory species are also a common trigger.

### 3.1.2 Referred proposals – clearly unacceptable decisions

In addition to the clearly unacceptable decision noted in paragraph 3.1.1 (above), since 30 June 2008 there have been a further two occasions where the Minister has decided that a referred action was ‘clearly unacceptable’ and not able to proceed under the EPBC Act.<sup>26</sup> The most recent decision, made on 5 September 2008, concerned a proposal to establish a rail line and coal port in the Shoalwater Bay Training Area, north of Rockhampton in Queensland.

## **3.2 EIA approaches**

Following the decision that a referred action is a controlled action, the next step in the process of environmental impact assessment and approval under Chapter 4 of the EPBC Act is selection of an approach for assessing the likely environmental impacts of the proposed action.

Part 8 of the EPBC Act establishes the framework for undertaking environmental assessments of the impacts of controlled actions. The purpose of undertaking such assessments is to provide information for consideration by the Minister (or delegate) when deciding whether or not to approve the taking of the action.

Part 8 of the EPBC Act does not apply to actions that fall within the scope of a bilateral agreement—bilateral agreements are discussed at paragraph 3.6 of this submission.

The Minister (or delegate) generally makes a decision on approach for the EIA at the time of making a decision that an action is a ‘controlled action’.<sup>27</sup> The EPBC Act provides a range of assessment approaches to account for differences in the nature of proposed actions, the quality of available information available, the level of public interest in a particular proposal and the nature and scale of the likely impacts from the action.

---

<sup>26</sup> The Minister’s ability to decide that an action would have unacceptable impacts was introduced as part of the 2006 amendments to the EPBC Act.

<sup>27</sup> EPBC Act, s.87.

Assessment approaches available under Chapter 4 of the EPBC Act include:

- assessment based on information provided in the referral
- assessment based on preliminary documentation
- assessment by public environment report (PER)
- assessment by environmental impact statement (EIS), and
- assessment by public inquiry.

The Minister (or delegate) also has the ability to accredit another Commonwealth, State or Territory assessment process. Accreditation can be done on a case-by-case basis or, in the case of a State or Territory assessment process, under a bilateral agreement—bilateral agreements are discussed at paragraph 3.6 of this submission.

The EPBC Act sets out the process and timing requirements for each type of assessment, including opportunities for public comment.

A diagrammatic representation of the assessment approval decision process is provided at **Attachment B** of this submission.

### 3.2.1 Statistics on assessment approach decisions under the EPBC Act

Since commencement of the EPBC Act until 30 June 2008, the most common approach used to assess the impacts of a controlled action has been assessment based on preliminary documentation—241 controlled action proposals have been or are being assessed using this approach.

As the number of bilateral agreements between the Australian Government and the States and Territories has increased, the number of impact assessments conducted under assessment bilateral agreements has increased. Since commencement of the EPBC Act until 30 June 2008, 108 assessments have been or are being conducted under an assessment bilateral agreement.

Case-by-case accredited assessment processes have been or are being used for 83 actions.

Impact assessments undertaken using the PER and EIS approaches under the EPBC Act have been used less frequently with 31 actions being assessed by PER and 29 actions being assessed by EIS.

Assessment on referral information is a relatively new level of assessment introduced as part of the 2006 amendments to the EPBC Act, with five assessments being undertaken using this method. There have been no impact assessments using the public inquiry approach.

As at 30 June 2008, there were 168 actions under assessment, including those for which recommendation reports were in progress.

### 3.3 Approval decisions

Part 9 of the EPBC Act provides the framework for making decisions about whether or not to approve actions that are likely to have a significant impact on a protected matter. It also provides for the formulation of any conditions that might attach to an approval decision made under the Act.

Following assessment of the environmental impacts of a controlled action, the Minister (or delegate) makes a decision whether or not to approve an action. When deciding whether to approve an action, and what, if any, conditions to impose, the Minister must take into account:

- the impacts of the proposed action on the relevant protected matters
- economic and social matters
- the principles of ecologically sustainable development.
- outcome of the assessment of the impacts of the action
- the referral documentation
- any community and stakeholder comments about the action
- other relevant information available on the impacts of the action, and
- any relevant comments from Australian Government, State and Territory Ministers about the action.<sup>28</sup>

The decision-maker may also take into account the environmental history of the individual or organisation proposing to take the action. Specific considerations also apply for actions that may impact on Australia's ability to fulfill its international obligations with respect to the environment.<sup>29</sup>

There are three options open to the Minister (or delegate) when deciding whether to approve an action under the EPBC Act:

- *approve* the action
- *approve the action subject to conditions* – this approach is taken where the decision-maker considers that imposition of the condition/s is necessary or convenient for protecting a protected matter or repairing or mitigating damage to a protected matter. The types of conditions generally attached to approvals under the EPBC Act include conditions relating to the manner an action is to be undertaken, monitoring, auditing and reporting conditions, requiring the payment of a bond or security and the use of environmental offsets. Failure to comply with conditions attached to an approval may result in the imposition of sanctions,<sup>30</sup> or
- *not approve* the action – in such cases the action cannot proceed under the EPBC Act.

---

<sup>28</sup> EPBC Act, s.136.

<sup>29</sup> EPBC Act, s.137-140A.

<sup>30</sup> EPBC Act, Chapter 4, Part 9, Division 2.

### 3.3.1 Statistics on approval decisions under the EPBC Act

Since the Act's commencement until 30 June 2008, 249 approval decisions have been made. Of these 249 actions:

- 231 actions were approved with conditions
- 11 actions were approved without conditions, and
- seven actions were refused.

A further 142 actions were withdrawn or lapsed after it was decided that the action was a 'controlled action'.

### **3.4 ANAO Audit 38, 2002-03**

In its Audit Report No.38 of 2002-03, *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*, the ANAO made a number of recommendations directed toward improving the consistency and quality of referrals made under the EPBC Act. The recommendations included finalising sectoral guidance on the EPBC Act, encouraging proponents to seek advice from DEWHA before referring an action and investigating measures by which this could be achieved.

In this report the ANAO also made recommendations about attempts to circumvent the EPBC Act provisions by referring proposed actions through a series of staged developments. In response to these recommendations DEWHA revised the template referral form and guidelines to require that proponents identify actions that are components of larger actions. In addition, the *Environment and Heritage Legislation Amendment Act (No 1) 2003* inserted a new section 74A into the EPBC Act, which confers power on the Minister to refuse to accept a referral for an action that is a component of a larger action. Related notification requirements also apply in these circumstances.

### **3.5 ANAO Audit 31, 2006-07**

In its Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*, the ANAO followed up on the findings and recommendations made in its Audit Report No.38 of 2002-03 and noted that DEWHA has made 'progress in terms of improving general as well as industry specific policy guidance', including the provision of Significant Impact Guidelines, Industry-Specific Guidelines, and Nationally Threatened Species and Ecological Communities Guidelines.

In its 2006-07 Audit Report, the ANAO also recommended that DEWHA encourage all required referrals under the EPBC Act. The ANAO recommended that DEWHA focus renewed efforts and resources on promoting compliance with the EPBC Act in priority regions of Australia and on building strong compliance partnerships with key local governments (in cooperation with State agencies) to ensure, where practicable, that matters of NES are considered early in the planning process. Information about

DEWHA's compliance and enforcement activities is provided in Chapter 6 of this submission.

### 3.6 Intergovernmental cooperation on EIA and approval

The EPBC Act provides for the Australian Government to enter into bilateral agreements with the States and Territories.

There are two forms of bilateral agreements:

- An *assessment bilateral agreement* where the environmental impacts of a proposed action are assessed using State and Territory processes but the approval decision is made by the Minister (or delegate) under the EPBC Act;
- An *approvals bilateral agreement* where no further approval is required under the Act because actions are subject to a bilaterally accredited management arrangement or authorisation process in place under State or Territory law.

Part 5 of the EPBC Act provides that the objects of concluding bilateral agreements between the Australian Government and a State or Territory Government under the EPBC Act are to:

- Protect the environment
- Promote the conservation and ecologically sustainable use of natural resources
- Ensure an efficient, timely and effective process for environmental assessment and approval of actions, and
- Minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the relevant State or Territory (and vice versa).<sup>31</sup>

A key function of bilateral agreements is to reduce duplication of environmental assessment and approval processes between the Australian Government and the State and Territory governments. Bilateral agreements allow the Australian Government to 'accredit' particular State and Territory EIA processes, and in some cases State and Territory approval decisions. In effect, bilateral agreements allow the Commonwealth to delegate the responsibility for conducting environmental assessments to the States and Territories and, in certain circumstances, to delegate responsibility for all aspects of the approvals process under the EPBC Act.

#### 3.6.1 Assessment bilateral agreements

To be accredited, a State or Territory EIA process must first meet 'best practice' criteria. Section 50 of the EPBC Act provides that the Minister can enter into a bilateral agreement only if satisfied that the agreement accords with the objects of the EPBC Act and meets any requirements prescribed in the EPBC Regulations.

If a proposed action is covered by an assessment bilateral agreement, the action is assessed under the accredited State or Territory EIA process. After EIA has been

---

<sup>31</sup> EPBC Act, s.44.



completed, the proposed action still requires approval from the Minister (or delegate) under the EPBC Act before it can proceed.

### 3.6.2 Statistics on assessment bilateral agreements

There are assessment bilateral agreements between the Australian Government and New South Wales, Queensland, Western Australia, South Australia, the Northern Territory and Tasmania.

The Australian Government is also currently negotiating bilateral assessment agreements with the Victorian and Australian Capital Territory (ACT) governments. A draft of the assessment bilateral agreement between the Australian Government and the ACT is currently out for public comment.

### 3.6.3 Approvals bilateral agreements

To be accredited, a State or Territory environmental approvals process must first meet 'best practice' criteria. Section 50 of the EPBC Act provides that the Minister can enter into a bilateral agreement only if satisfied that the agreement accords with the objects of the EPBC Act and meets any requirements prescribed in the EPBC Regulations. Section 46 further provides that in respect of approvals bilateral agreements, the Minister must also be satisfied that:

- there will be adequate assessment of the impacts that actions approved under the bilaterally accredited management arrangement or bilaterally accredited authorisation process have, will have or are likely to have on a protected matter, and
- actions approved under the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a protected matter.

If a proposed action is covered by an approvals bilateral agreement, the action is assessed and approved by the relevant State or Territory in accordance with a bilaterally accredited management arrangement or a bilaterally accredited authorisation process. No further approval is required under the EPBC Act for the action to proceed.

### 3.6.4 Statistics on approval bilateral agreements

One approval bilateral agreement has been concluded since the EPBC Act commenced. This agreement is between the Australian Government and the New South Wales Government and applies to protection and management of the World Heritage and National Heritage values of the Sydney Opera House.

Another approvals bilateral agreement is also under negotiation for the National Heritage listed Burrup Peninsula.

The low number of approval bilateral agreements is an indication of the high standard required for the Australian Government to agree to delegate its powers under the EPBC Act.

### 3.6.5 COAG Business Regulation and Competition initiative

DEWHA is contributing to work being undertaken by the COAG Business Regulation and Competition Working Group (BRCWG), which is focused on reducing the costs of regulation in Australia with a view to delivering improvements for Australian competition, productivity and international competitiveness. In this context of moving towards greater harmonisation in regulation between the federal and state level and overall reducing regulatory duplication, the BRCWG has committed to developing more bilateral agreements and examining strategic approaches for management and protection of the environment.

## **3.7 Strategic approaches to environmental impact assessment and approval**

The EPBC Act contains a number of mechanisms to strategically protect matters of NES and other protected matters. These mechanisms include strategic assessments, bioregional plans and conservation agreements. These strategic approaches involve an assessment of broader policies and plans, which is to be contrasted with the case-by-case approach to environmental protection through the EIA approaches adopted in Chapter 4 of the EPBC Act.

Similar to the approach taken for the EIA and approval processes under Chapter 4 of the EPBC Act, public consultation and an assessment of impacts on matters protected by the EPBC Act are also a requisite element of strategic assessment processes under the Act.

### 3.7.1 Strategic Assessments

Under section 146 of the EPBC Act, the Minister can agree to conduct a 'strategic assessment' of the impacts of potential actions taken under a policy, program or plan on protected matters. By way of example, a policy, plan or program may include:

- regional-scale development plans and policies
- district structure plans
- local environmental plans
- large-scale industrial development
- fire, vegetation or pest management policies, plans or programs
- water extraction/use policies, and/or
- infrastructure plans and policies.

A strategic assessment may examine the potential impacts of actions, including cumulative impacts, which are to be taken in accordance with one or more policy, program or plan. It is, by its nature, a collaborative assessment process undertaken by the Australian Government in conjunction with the person responsible for the

adoption or implementation of the policy, program or plan. By way of example, such persons can include state and local governments, developers or resource and mining companies.

A strategic assessment can also consider impacts on the full range of matters of NES within a particular area or associated with a particular policy, plan or program including world heritage and national heritage values, threatened species, threatened ecological communities, the ecological character of wetlands of international importance, listed migratory species and Commonwealth marine areas.

### 3.7.2 Statistics on the use of strategic assessments

#### *Strategic assessment of the Kimberly region*

The first application of the strategic assessment regime in Part 10 of the EPBC Act is the strategic assessment currently underway in the Kimberly region of Western Australia. In response to growing industrial pressure in the Kimberley, primarily from oil and gas exploration in the Browse Basin, the Australian and Western Australian Governments have signed a Joint Agreement to undertake a joint strategic assessment under section 146 of the EPBC Act to select a suitable location for a common-user liquefied natural gas (LNG) processing hub. The Joint Agreement also allows for a broader assessment of potential national heritage values in the Kimberley.

The Joint Agreement under the EPBC Act provides a means for proactively addressing what would otherwise be the negative cumulative impacts and economic inefficiencies associated with piecemeal LNG-related developments to service the Browse Basin. It will also provide greater certainty to industry, government and the community and secure long-term protection of the heritage and environmental values of the Kimberley region. Ultimately, this assists the minimisation of long-term negative impacts on the Kimberley's unique values while facilitating sustainable economic development in the region.

#### *Further strategic assessments, including the Molonglo and North Weston urban development*

Further possible strategic assessments are under discussion with several States.

On 16 September 2008, the Minister, together with the Australian Capital Territory (ACT) Government Minister for Planning, Mr Andrew Barr, announced that the Australian and ACT Governments will conduct a strategic assessment of the proposed Molonglo and North Weston Structure Plan. The Structure Plan sets out the planning and development guidelines and principles for urban development and associated infrastructure at Molonglo and North Weston.

The strategic assessment will be conducted under section 146 of the EPBC Act. Draft Terms of Reference for the assessment have been developed to guide the preparation of a report identifying the area's environmental values (including matters of NES), the impacts of development and strategies to reduce impacts on matters of NES. A copy of

the Draft Terms of Reference can be obtained from the DEWHA website:  
<http://www.environment.gov.au/epbc/notices/assessments/pubs/act-terms-of-reference.pdf>.

Preliminary environmental investigations in the Molonglo and North Weston area have identified several matters of NES. These include the Pink-tailed Worm-lizard which is listed under the EPBC Act as vulnerable, and the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland and the Natural Temperate Grasslands of the Southern Tablelands of NSW and the ACT, which are listed as critically endangered. The strategic assessment will ensure that sustainable development and matters of NES are considered early in the development planning process.

#### *Fisheries strategic assessments*

Strategic assessments have also been used in the context of fisheries management, with 23 assessments having been concluded for Commonwealth managed fisheries. These strategic assessments are conducted under Part 10 of the EPBC Act, and against the Guidelines for the Ecologically Sustainable Management of Fisheries, which specify principles for a transparent evaluation of the ecological sustainability of fishery management arrangements. Further information about fisheries management is provided in Chapter 4 of this submission.

#### 3.7.3 Bioregional plans

Under section 176 of the EPBC Act, the Minister can prepare a bioregional plan for a region that is within a Commonwealth area, which includes both Commonwealth land and Commonwealth marine environments. The Commonwealth can also work with state and territory governments and others to establish plans extending beyond Commonwealth land and waters.

Bioregional plans are a mechanism for understanding the biodiversity, heritage, social and economic values of a particular area, identifying management objectives and priorities in relation to those values and strategies and actions for achieving those objectives.

Bioregional plans can facilitate a more strategic approach to conservation and provide greater certainty by guiding government, sectoral managers and industry in making decisions about the key conservation issues and priorities in the relevant region. Bioregional plans, for example, can improve the context in which environmental impact assessments occur and inform the location and management of protected areas.

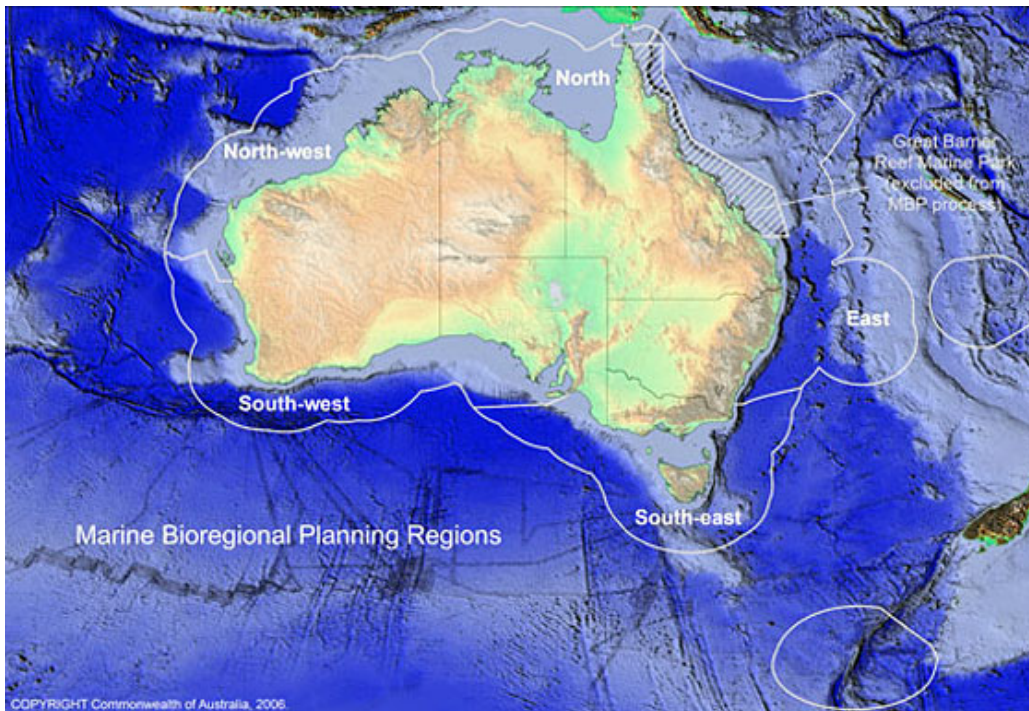
In terms of administration of the EPBC Act, if a bioregional plan is endorsed under the EPBC Act, subsequent actions taken in accordance with the plan can be exempted from separate or individual approval under the EPBC Act.

### 3.7.4 Statistics on the use of bioregional plans

Bioregional plans are being established throughout Australia's 14 million square kilometre oceans jurisdiction. The Commonwealth's marine jurisdiction has been divided into five regions:

- south-east
- south-west
- north-west
- north, and
- east marine regions

The marine regions are identified in the map below.



Plans will be developed to identify conservation priorities, measures to address those priorities and applicable statutory obligations under the EPBC Act.

As a key part of the bioregional planning process, the Australian Government is identifying marine protected areas for inclusion in *the National Representative System of Marine Protected Areas*

A bioregional profile for the South-west Marine Region was released in October 2007. The bioregional profile is the first step in development of a bioregional plan. The development of profiles for the North, North-west and East Marine Regions is nearing completion and they are expected to be released in early 2008-09.

### 3.7.5 Conservation agreements

A conservation agreement is an agreement between the Minister and another person for the protection and conservation of:

- biodiversity
- the world heritage values of declared World Heritage properties
- the national heritage values of National Heritage places
- the Commonwealth heritage values of Commonwealth Heritage places
- the ecological character of declared Ramsar wetlands
- the environment in respect of the impact of a nuclear action
- the environment in a Commonwealth marine area, and
- the environment on Commonwealth lands.

Conservation agreements are concluded under Part 14 of the EPBC Act.

Conservation agreements can specifically provide for activities that promote the protection and conservation of all or any of the matters listed above. Conservation agreements can also require the owner of a place to:

- carry out activities that promote the protection and conservation of biodiversity
- refrain from, or control, activities that may adversely affect the species, ecological community, or habitat, covered by the agreement
- permit access to the place by specified persons
- contribute towards the costs incurred under the agreement
- spend any money paid to them under the agreement in a specified manner, and
- forfeit any money paid to them under the agreement if they contravene the agreement,

and may include a declaration that actions of a specified category do not require assessment and approval under the EPBC Act.

Actions taken contrary to a conservation agreement may be subject to sanctions, remediation or the imposition of mitigation measures.

### 3.7.6 Statistics on the use of conservation agreements

There are currently 12 conservation agreements in place under the EPBC Act. All conservation agreements, as well as notifications when new agreements are concluded, or existing agreements are varied or terminated, are published on the DEWHA website ([www.environment.gov.au/epbc/about/conservation-agreements.html#list](http://www.environment.gov.au/epbc/about/conservation-agreements.html#list)).

## 4. BIODIVERSITY CONSERVATION

---

### 4.1 EPBC Act framework

The EPBC Act provides a legal framework for the conservation and sustainable use of Australia's biodiversity.

Section 528 of the EPBC Act defines biodiversity as the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part), including:

- diversity within species and between species, and
- diversity of ecosystems.

Chapter 5 of the EPBC Act provides for a suite of provisions that enable the identification and management of biodiversity, including:

- identification and listing of nationally threatened species and ecological communities, migratory and marine species
- preparation of conservation advice and / or national recovery plans and wildlife conservation plans for listed species and ecological communities, as well as additional protection for individual listed species and ecological communities located in Commonwealth areas
- identification and listing of key threatening processes (KTPs) and the option to prepare threat abatement plans (TAPs) for KTPs
- provisions for the protection of cetaceans (whales, dolphins and porpoises) and the establishment of the Australian Whale Sanctuary
- regulation of the international movement of wildlife and wildlife products
- preparation of bioregional plans, and
- conservation agreements.

The EPBC Act also establishes regimes for the protection and management of World Heritage properties, National and Commonwealth heritage places, Ramsar wetlands, biosphere reserves, Commonwealth reserves and conservation zones. The protections afforded under these regimes can extend to biodiversity present in those places.

A range of other provisions in the EPBC Act and EPBC Regulations also contribute to the protection and conservation of biodiversity, including Regulation 8A for facilitating access to biological resources in Commonwealth areas and the protection of the matters of NES through environmental impact assessment and approval.

### 4.2 Identification and monitoring biodiversity under the EPBC Act

Division 1 of Part 12 of the EPBC Act empowers the Minister to provide financial or other assistance for the purpose of identifying and monitoring components of

biodiversity. The 'components of biodiversity' include species, habitats, ecological communities, genes, ecosystems and ecological processes.<sup>32</sup>

#### 4.2.1 Biodiversity on Commonwealth land and Commonwealth marine areas

Section 172 of the EPBC Act enables the Minister to prepare inventories that identify and record the abundance of listed threatened species and ecological communities, listed migratory species and listed marine species in an area of Commonwealth land.

Similarly, section 173 of the EPBC Act enables the Minister to prepare inventories that identify and record the extent and range of cetaceans, listed threatened species and ecological communities, listed migratory species and listed marine species in a Commonwealth marine area.

Inventories established under sections 172 and 173 of the EPBC Act are used to inform decisions made under the Act, including referral, assessment and approval decisions.

Further information about the listing processes is provided below.

#### 4.2.2 Species Profile and Threats Database

DEWHA maintains a Species Profile and Threats Database (SPRAT) which contains information about species and ecological communities listed under the EPBC Act, including information about the appearance, population and distribution, habitat, movements, feeding and reproduction of species. It also includes taxonomic comments. SPRAT is available to the public from the DEWHA website: <http://www.environment.gov.au/cgi-bin/sprat/public/sprat.pl>.

DEWHA has been increasing the quality and quantity of the information included in the SPRAT database. Approximately 25 high quality public profiles are now being added each month. The profiles are also now made publicly available.

#### 4.2.3 Australian Centre for Applied Marine Mammal Science

The Australian Centre for Applied Marine Mammal Science in DEWHA's Australian Antarctic Division is a national research centre focused on understanding, protecting and conserving whales, dolphins, seals and dugongs in the Australian region. It provides scientific research and advice on marine mammal matters and manages a series of centralised marine mammal databases.

#### 4.2.4 State of the Environment Reporting

Under section 516B of the EPBC Act the Minister must arrange for a State of the Environment Report to be prepared every five years.

---

<sup>32</sup> EPBC Act, s.171(3).



Reports have been prepared in 2001 and 2006.<sup>33</sup>

The Reports are a source of information about environmental and heritage conditions in Australia and trends and pressures for the Australian continent, surrounding seas and external territories.

### **4.3 Listing of nationally threatened species and ecological communities**

Part 13 of the EPBC Act provides for the listing of nationally threatened native species and ecological communities.

The decision to list a species or ecological community under the EPBC Act establishes a requirement to protect the species or ecological community and can create a priority for investment through natural resource protection programs. Information about natural resource protection programs administered by DEWHA is provided in Chapter 7 of this submission.

#### 4.3.1 Threatened species

Under sections 178, 179 and 180 of the EPBC Act the Minister must establish a list of threatened native species, divided into six categories:

- extinct
- extinct in the wild
- critically endangered
- endangered
- vulnerable, and
- conservation dependent.

Regulation 7.01 of the EPBC Regulations specifies criteria for identifying the appropriate category when listing threatened species.<sup>34</sup>

Listed threatened species are provided with protection under the Act. These protections include specific criminal offences under Part 13 of the Act for killing, injuring, taking or trading a member of a listed threatened species (except conservation dependent species) in a Commonwealth area.

Threatened species listed under the EPBC Act, except extinct and conservation dependent species, are also one of the matters of NES under the Act. As such, specific protections afforded to matters of NES under Part 3 of the EPBC Act also apply, that is, criminal offences and civil penalties can apply for taking an action which has, will have or is likely to have a significant impact on a listed threatened species (except extinct or conservation dependent species) without approval or authorisation under the Act.

---

<sup>33</sup> A copy of the 2006 State of the Environment Report can be obtained from the DEWHA website: <http://www.environment.gov.au/soe/2006/publications/report/index.html>.

<sup>34</sup> A copy of the EPBC Regulations can be obtained from: <http://www.comlaw.gov.au>.

### 4.3.2 Threatened ecological communities

Ecological communities are unique and naturally occurring groups of plants and animals that inhabit a particular area in nature.

Under sections 181 and 182 of the EPBC Act the Minister must establish a list of threatened ecological communities, divided into three categories:

- critically endangered
- endangered, and
- vulnerable.

Regulation 7.02 of the EPBC Regulations specifies criteria for identifying the appropriate category when listing threatened ecological communities.

If an ecological community is listed as threatened under the EPBC Act (that is, listed as critically endangered, endangered or vulnerable) it is provided with protection under the Act. These protections include specific criminal offences under Part 13 of the EPBC Act for killing, injuring, taking or trading a member of a listed threatened ecological community in a Commonwealth area.

Ecological communities listed as critically endangered or endangered under the EPBC Act are also one of the matters of NES under the Act. As such, the protections afforded to matters of NES under Part 3 of the EPBC Act also apply, that is, criminal and civil penalties can apply if an action, which will have or is likely to have a significant impact on a listed critically endangered or endangered ecological community, is taken without approval or authorisation under the Act.

### 4.3.3 Critical Habitat

In addition to listing threatened species and ecological communities, under section 207A of the EPBC Act the Minister must also maintain a register of habitat that is critical to the survival of a listed threatened species or a listed threatened ecological community. This is called the 'Register of Critical Habitat'.

In considering whether to list a habitat, the Minister must take into account the potential conservation benefit of listing the habitat.

Before listing a habit in the Register of Critical Habitat, the Minister must also consider any advice from the Threatened Species Scientific Committee (TSSC) about whether the habitat is critical to the survival of a listed threatened species or ecological community. If the habitat is not located in a Commonwealth area, the Minister must also be satisfied that reasonable steps have been taken to consult with the owner of the property where the habitat is located.

The EPBC Regulations mandate the type of information that must be included on the Register—Regulation 7.10 specifically requires that the Register contain sufficient

information to identify the habitat, including its location and extent, and the reasons the habitat was identified for inclusion on the Register of Critical Habitat.

In addition to the criminal, civil and administrative penalties that can apply for taking an action that is likely to have a significant impact on a matter of NES (which include threatened species and threatened ecological communities in an area of listed critical habitat) without approval or authorisation under the Act, section 270B also makes it a criminal offence to knowingly damage critical habitat.

If the Commonwealth sells land containing identified Critical Habitat, the sale contract must include a covenant protecting the habitat in-perpetuity.

#### 4.3.4 Nominations for listing threatened species and ecological communities

Under section 194A of the EPBC Act, any person can nominate a species or ecological community for listing under the Act.

Following the 2006 amendments to the EPBC Act, the nomination process now includes:

- the option for the Minister to establish a conservation theme when inviting nominations (for example particular habitat types, or threats),
- the selection of nominations of highest priority for assessment – taking into account considerations such as the conservation theme and benefit of listing the species, ecological community or threatening process, and
- the establishment of deadlines within which assessment of the selected nominations must be completed – these deadlines are established at the commencement of the annual assessment cycles.

A flowchart providing a diagrammatic representation of the listing process is provided at **Attachment C**.

All nominations are forwarded to the TSSC for consideration. The TSSC assesses nominations against specified criteria and provides advice to the Minister regarding the eligibility of the species or ecological community for listing. The Minister then determines, after considering the TSSC's recommendation, whether or not the species or ecological community should be listed.

When considering the listing of a threatened species, the TSSC also recommends to the Minister if critical habitat for a species or ecological community also needs to be listed under the EPBC Act. Other rules for the nominations process are prescribed in Division 7.2 of the EPBC Regulations.

#### 4.3.5 Statistics on listed threatened species

As at 30 June 2008, there were 1700 species included on the list of threatened species.<sup>35</sup>

---

<sup>35</sup> A list of threatened species under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/epbc/about/lists.html#species>.

There have been a total of 398 amendments to the list of threatened species since the commencement of the EPBC Act.

These amendments reflect new listings, changes in status, de-listings and amendments due to name changes, and include changes to keep the list up-to-date. For example, the conservation status of 52 species has been adjusted since the inception of the EPBC Act. A number of these adjustments were a result of new or better information about the distribution and/or abundance of the species. This was the case for four plants that were removed from the list of threatened species in January 2008.

#### 4.3.6 Statistics on listed threatened ecological communities

As at 30 June 2008, there were 39 ecological communities listed as threatened under the EPBC Act. These cover a diverse range of community types ranging from discrete, localised communities such as the aquatic root mat and thrombolite communities in Western Australia to broad-scale communities such as the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland found across Queensland, New South Wales, the Australian Capital Territory and Victoria.<sup>36</sup>

The most recent addition to the list of threatened ecological communities was the Natural Temperate Grassland of the Victorian Volcanic Plain, which was listed as critically endangered in June 2008.

#### 4.3.7 Statistics on listed critical habitat

Since the EPBC Act came into force, 'critical habitat' has been listed for five threatened species. There are no ecological communities for which critical habitat has been identified.<sup>37</sup>

The Minister, on advice from the TSSC, makes case-by-case assessments about whether a listing on the Register of Critical Habitat is appropriate.

#### 4.3.8 Improvements to threatened species and ecological community listing

Over the life of the Act, a number of improvements have been made to the listing processes for threatened species and ecological communities under the EPBC Act. Notably, the 2006 amendments to the Act improved the listing and recovery process by allowing a focus on those nominations of highest priority, increasing transparency and formalising public involvement in the listing process.

As noted earlier in this submission, in its Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*, the

---

<sup>36</sup> A list of threatened ecological communities under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/cgi-bin/sprat/public/publiclookupcommunities.pl>.

<sup>37</sup> A copy of the Register of Critical Habitat under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/cgi-bin/sprat/public/publicregisterofcriticalhabitat.pl>.

ANAO made a number of recommendations about DEWHA's administration of the EPBC Act in terms of conserving threatened species and ecological communities. DEWHA has accepted the ANAO's recommendations.

#### 4.3.9 Initiatives relevant to the listing of threatened species and ecological communities under the EPBC Act

##### *Consultation, Workshops and Policy Statements*

As part of the listing process for ecological communities, the TSSC undertakes extensive consultation, including technical workshops with relevant experts, to ensure that the description, condition and extent of an ecological community are properly considered when assessing the ecological community against the criteria for listing. Specific efforts have also been made to consult with landholders who may be affected by a listing—this has generally occurred through a DEWHA officer out-posted to the National Farmer's Federation.

Workshops are also increasingly being used to assist in the development of policy statements for threatened species and ecological communities. In 2007-08, DEWHA conducted policy statement workshops to gather expertise and advice on the growling grass frog, golden sun-moth, spiny rice-flower and black-throated finch. DEWHA has also conducted threatened species workshops for regulators, consultants and experts, which have provided an opportunity for consolidating information and expertise.

##### *Communities for Communities Newsletter*

Since 2005, DEWHA has prepared and distributed a newsletter '*Communities for Communities*' several times a year (usually quarterly) which provides information to the public about threatened ecological communities listed under the EPBC Act or nominated for listing, and other activities being undertaken by DEWHA to conserve biodiversity. Community groups are encouraged to use *Communities for Communities* as a source of information for their own newsletters.

##### *Conservation advice search tool*

DEWHA hosts an on-line natural resource management tool that enables people to search for conservation advice on threatened species and ecological communities by specific natural resource management regions. New conservation advice is continually added. The conservation advice search tool assists regional planning bodies, community groups, landholders and others to plan activities for the conservation and recovery of listed threatened species and ecological communities. The conservation advice search tool is available to the public from the DEWHA website:

<http://www.environment.gov.au/cgi-bin/sprat/public/conservationadvice.pl>.

#### 4.3.10 Intergovernmental cooperation on threatened species and ecological communities listing

All Australian state and territory jurisdictions maintain lists of threatened species and a list, either legislative or administrative, of threatened ecological communities. DEWHA is committed to improving consistency in listing and subsequent management process between state/territory lists and lists maintained under the EPBC Act.

Since 2004, DEWHA has progressively entered into Species Information Partnerships with states/territories to increase the exchange of information about the listing and recovery of threatened species. These partnerships have also been directed at increasing harmony and reducing duplication between the state/territory and EPBC Act lists. In particular, DEWHA has sought information from South Australia, Western Australia, the Northern Territory, Tasmania and Victoria about threatened species that are endemic to that state/territory and listed inconsistently under state/territory and the EPBC Act lists. This information has been used as the basis for an assessment of species by the TSSC.

DEWHA's Species Information Partnerships have also improved alignment between the state/territory and EPBC Act lists of threatened species, with 79 amendments made to the EPBC Act list since 2005 to better align the list with those lists maintained by Western Australia, the Northern Territory, South Australia and Tasmania.

In its Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*, the ANAO recommended that Species Information Partnerships be continued and, if possible, accelerated. The ANAO also recommended that DEWHA undertake a review of the state and territory lists of threatened ecological communities to determine which communities are eligible for listing under the EPBC Act.

DEWHA is making additional effort in listing advices to identify links between threatened ecological communities listed under the EPBC Act and communities listed by states and territories.

Many of the ecological communities listed under the EPBC Act, and those on the 2007 Finalised Priority Assessment List that are being considered for listing under the Act, cross across state boundaries and / or equate to many more smaller communities or regional ecosystems that receive varying levels of protection by the states and territories. From 2007-08 onwards, additional effort is also being made in the listing advices to clearly describe links between EPBC Act listed ecological communities and the state and territory listings.

Noting overlaps between the EPBC Act and state and territory lists, DEWHA is also working with state and territory agencies to develop a process for better aligning lists in the future, including prioritisation for future EPBC Act listing of ecological

communities that are already listed by states and territories, and that are under the greatest threat and would benefit most from additional protection under the EPBC Act.

#### **4.4 Permits for listed threatened species and ecological communities**

##### *Permits under the EPBC Act*

As noted earlier in this submission, Part 13 of the EPBC Act contains offences for harming threatened species, ecological communities and critical habitat listed under the Act in Commonwealth areas. In particular, sections 196-196E of the EPBC Act create offences for killing, injuring, taking and trading in threatened species and ecological communities listed under the Act and section 207B creates an offence of knowingly damaging critical habitat. Section 197 of the EPBC Act provides an exception to these offences where the action was authorised by a permit issued under the Act.

Section 201 of the EPBC Act empowers the Minister to issue permits authorising actions to be taken against listed threatened species, ecological communities and critical habitat, but only if the Minister is satisfied that, among other things, the action will contribute significantly to the conservation of the relevant listed threatened species or ecological community. Conditions can be imposed on permits issued under section 201 of the EPBC Act, including time limits for specified acts. Under section 203 of the Act it is a criminal offence to contravene the conditions of a permit.

##### *Permits under the EPBC Regulations*

Section 303 of the EPBC Act provides that the EPBC Regulations may make provision for the conservation of biodiversity in Commonwealth areas. In particular, the Regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area.

Part 9 of the EPBC Regulations creates criminal offences for killing, injuring or taking a member of a 'protected species' in the Coral Sea Islands, Christmas Island or Cocos (Keeling) Islands Territories in the absence of a permit issued under Part 17 of the Regulations. For the purposes of these offences, 'protected species' are listed in Schedule 12 of the EPBC Regulations.

##### 4.4.1 Statistics on permitting

Since commencement of the EPBC Act, a range of permits have been issued under section 201 of the Act authorising certain actions to be taken in respect of a listed threatened species or ecological community.

Examples of permits that have been issued include:

- A permit to conduct a survey of the golden sun moth (*Synemon plana*) populations in Barton, ACT. The species is listed as critically endangered under the EPBC Act. The survey will be compared with similar surveys carried

out during the 1980s to learn the effect of site management and environmental conditions on the population since that time, and

- A permit to conduct a survey of the grassland earless dragon (*Tympanocryptis pinguicolla*) at Canberra International Airport, ACT. The survey will determine the presence and distribution of grassland earless dragons in the area. The results will be compared with similar monitoring work carried out in previous years and will provide information to assist in conservation of the species.

#### **4.5 Protections for threatened species and ecological communities listed under the EPBC Act**

Threatened species, except extinct and conservation dependent species, and ecological communities listed as critically endangered or endangered are protected as matters of NES under the EPBC Act. Any action that has, will have or is likely to have a significant impact on a listed threatened species (except extinct and conservation dependent species) or a listed critically endangered or endangered ecological community requires referral under the EPBC Act. Proceeding with such actions in the absence of approval or authorisation under the EPBC Act can be subject to serious criminal and civil sanctions.

As noted earlier in this submission, DEWHA has issued a number of Policy Statements to assist proponents to make decisions about whether an action is likely to have a significant impact on a protected matter, and should therefore be referred under the EPBC Act. These include Policy Statement 1.1 '*Significant Impact Guidelines– Matters of national environmental significance 2006*' and supplementary policy statements for a range of threatened species and ecological communities such as the south-eastern mainland population of the Tiger Quoll and the Peppermint Box (*Eucalyptus odorata*) Grassy Woodland and Iron-grass Natural Temperate Grassland.

Further information about the referral, assessment and approvals process under the EPBC Act is provided in Chapter 6 of this submission.

Following the addition of a species or ecological community to the list, in addition to the protections the EPBC Act affords to matters of NES, Part 13 of the EPBC Act also imposes subsequent requirements to halt the decline and support the recovery of the species or ecological community. These take the form of conservation advices and recovery plans.

##### 4.5.1 Conservation advice

Under section 266B of the EPBC Act, the Minister must ensure that there is an approved conservation advice for all listed threatened species and listed threatened communities at all times while the species or community continues to be listed, except for

- extinct species
- conservation dependent species, for which however there must be a specific conservation program in place, and



- threatened species and ecological communities that are covered by a recovery plan that is in place or in preparation.

A conservation advice is a succinct document that outlines the reasons why a species or ecological community is listed as threatened under the EPBC Act and provides guidance to interested parties (such as natural resource management groups) on recovery and threat abatement activities that can be undertaken to ensure the conservation of a listed species or ecological community.

#### 4.5.2 Statistics on conservation advice

The provision of conservation advice for all listed threatened species and ecological communities became a statutory requirement following the amendments to the EPBC Act in 2006. At that time, there were 766 species and ecological communities for which there was no conservation advice available or a recovery plan in place or in preparation. The Minister recently agreed to conservation advices for over 300 of these threatened species and ecological communities, which are now available on the DEWHA website<sup>38</sup>.

DEWHA will complete the preparation of conservation advice for the remaining species and ecological communities by 31 December 2008. Following the preparation of the conservation advices by DEWHA, each advice must be approved by the TSSC and then the Minister before it can be released to the public.

The Minister recently agreed to conservation advices for over 300 threatened species and ecological communities under the EPBC Act. These advices are available on the DEWHA website.<sup>39</sup>

Further conservation advices for the remainder of all currently listed threatened species and ecological communities are under preparation. For species and communities that do not currently have a conservation advice in place, those advices will be completed by the end of 2008. This project is running on schedule.

Conservation advice for all newly-listed threatened species and ecological communities is now prepared and made available at the time a species or community is listed under the EPBC Act.

---

<sup>38</sup> A list of conservation advices for listed threatened species and ecological communities under the EPBC Act can be obtained from the DEWHA website:

<http://www.environment.gov.au/cgi-bin/sprat/public/conservationadvice.pl>.

<sup>39</sup> A list of conservation advices for listed threatened species and ecological communities under the EPBC Act can be obtained from the DEWHA website:

<http://www.environment.gov.au/cgi-bin/sprat/public/conservationadvice.pl>.

### 4.5.3 Recovery plans

Under Division 5 of Part 13 of the EPBC Act, the Minister can make or adopt and implement recovery plans for threatened species and ecological communities (other than extinct or conservation dependent species) listed under the EPBC Act.

Recovery plans prescribe research and management actions necessary to stop the decline of, and support the recovery of, listed threatened species or threatened ecological communities. The aim of a recovery plan is to maximise the long term survival in the wild of a threatened species or ecological community.

The Minister must decide whether to have a recovery plan for a listed threatened species or ecological community within 90 days of the species or community being listed under the EPBC Act. This decision can be revisited at any time.

If the Minister decides, after considering advice from the TSSC, to have a recovery plan for a listed threatened species or ecological community, under section 270 of the EPBC Act the recovery plan must, among other things, prescribe the research and management action required to stop the decline and support the recovery of the relevant species or ecological community so that its chances of long-term survival in nature are maximised.

### 4.5.4 Statistics on recovery planning

DEWHA has invested significant effort in developing and implementing recovery plans for listed threatened species and ecological communities since the EPBC Act came into force. In undertaking this activity, DEWHA has worked closely with a range of stakeholders, particularly state and territory natural resource management agencies, to develop recovery plans suitable for adoption under the EPBC Act and, where appropriate, has also encouraged a coherent approach to threatened species recovery across jurisdictional boundaries.

As at 30 June 2008, there were 441 recovery plans in place and 385 in preparation for nationally listed threatened species and ecological communities. This is a total of 826 recovery plans in place or in preparation for nationally threatened species and ecological communities. Recovery plans are in place for 77 per cent of critically endangered species and 64 per cent of endangered species.<sup>40</sup>

Recovery plans under the EPBC Act have included initiatives to protect and recover habitat through fencing and revegetation, on-ground surveys and population monitoring, captive breeding programs, weed and feral pest control, and community education.

---

<sup>40</sup> A list of recovery plans for listed threatened species and ecological communities under the EPBC Act can be obtained from the DEWHA website:

<http://www.environment.gov.au/biodiversity/threatened/recovery-list-common.html>.

Under subsection 279(2) of the EPBC Act, the recovery plans must be reviewed at least every five years. In 2007–08, 52 recovery plan reviews were completed or under way, covering 55 species and two ecological communities.

#### 4.5.5 Developments in recovery planning for threatened species and ecological communities

The 2006 amendments to the EPBC Act removed the requirement to prepare a recovery plan for every threatened species and ecological community. The EPBC Act now requires the Minister to prepare a conservation advice for each newly listed threatened species and ecological community and leaves the decision whether to prepare a recovery plan at the discretion of the Minister, after considering advice from the TSSC.

In seeking to improve recovery efforts, in addition to continuing with recovery plans targeted at individual listed threatened species and communities, DEWHA is exploring the use of multi-species and regional plans which consider the needs of more than one threatened species or ecological community within the one plan. The aim of these approaches is to improve environmental outcomes and achieve efficiencies when undertaking recovery actions.

An example of a multi-species plan is the *Recovery Plan for Marine Turtles in Australia* which applies to six species of turtle that are listed as threatened under the EPBC Act.

DEWHA is also currently testing the feasibility of developing and adopting regional plans for threatened species recovery. In 2007–08, the first regional recovery plan was adopted. This plan concerns the Lord Howe Island Group and is directed at addressing threats and management actions relevant to the Island group's overall biodiversity. It will be implemented over a 10 year period.

#### *Prioritisation of recovery plan preparation*

The development of recovery plans can be an intensive process involving information gathering, engagement with relevant stakeholders and extensive public consultation.

In its Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*, the ANAO recommended that DEWHA prioritise the development of recovery plans, set a timetable for their completion and consider contracting experts to assist in expediting the process. DEWHA has reviewed the plans in preparation and established a schedule for their completion.

## **4.6 Key Threatening Processes (KTPs) and Threat Abatement Plans (TAPs)**

### 4.6.1 Listing KTPs

In addition to listing threatened species and ecological communities under the EPBC Act, under section 183 of the Act the Minister must also establish a list of KTPs.

A 'threatening process' is defined in section 188 of the EPBC Act as a process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community. A threatening process will be eligible to be a KTP if:

- it could cause a native species or ecological community to become eligible for listing in a category other than conservation dependent
- it could cause a listed threatened species or listed threatened ecological community to become eligible to be listed in another category where that category represents a higher degree of endangerment, or
- it adversely affects two or more listed threatened species (other than conservation dependent species) or two or more listed threatened ecological communities.

The identification of KTPs is an important step in highlighting the impact of certain processes on biodiversity, and developing and supporting efforts to ameliorate the impact of those processes.

#### 4.6.2 Statistics on KTPs

As at 30 June 2008, there were 17 KTPs listed under the EPBC Act.<sup>41</sup> These represent a wide range of threats at a variety of scales, including:

- incidental catch (or by-catch) of seabirds during oceanic long-line fishing operations
- diseases and fungal infections, including beak and feather disease that affects parrots, plant dieback caused by the root-rot fungus (*Phytophthora cinnamomi*) and infection of frogs with chytrid fungus
- land clearance
- loss of climatic habitat caused by anthropogenic emissions of greenhouse gases, and
- processes resulting from the introduction of seven species of vertebrate pests into Australia, including foxes, rabbits, goats, cane toads, pigs, rats and cats.

#### 4.6.3 TAPs for threatened species and ecological communities

Once a KTP is listed under the EPBC Act, the Minister must decide whether to develop a TAP for that KTP.

Section 270A of the Act provides that the Minister must decide to have a TAP for a KTP if the Minister believes that having and implementing a TAP is a feasible, efficient and effective way to abate the threat. In making this decision, consideration is given to what activities are already underway to abate the threat and whether a TAP would be complementary to or duplicative of these activities.

---

<sup>41</sup> A list of KTPs listed under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/cgi-bin/sprat/public/publicgetkeythreats.pl>.

TAPs are directed at assisting the long term survival in the wild of affected native species or ecological communities. They offer the opportunity to address threats that impact on multiple species.

If the Minister decides, after considering advice from the TSSC and the requirements of section 270A of the EPBC Act, to develop a TAP for a listed KTP, under section 271 of the EPBC Act the TAP must, among other things, provide for research, management and any other actions necessary to reduce the impact of a listed KTP on native species and ecological communities.

Under section 270A of the EPBC Act, the decision where to have a TAP must be reviewed every five years if the original decision was not to have a TAP.

Under subsection 279(2) of the EPBC Act, TAPs themselves must be reviewed at least every five years.

#### 4.6.4 Statistics on TAPs

As at 30 June 2008, there were 10 TAPs in place for KTPs listed under the EPBC Act, covering 11 of the listed KTPs.<sup>42</sup>

### **4.7 Invasive species**

Invasive species are a species occurring, as a result of human activities, beyond its accepted normal distribution and which results in damage that threatens valued environmental, agricultural or other social resources. In many cases, the artificial extension of the range of the species results in it being divorced from its usual regulatory mechanisms (such as predators, herbivores, diseases and parasitoids), and consequently provides the species with a competitive advantage.

Invasive species can include:

- Diseases, fungi and parasites
- Feral vertebrate animals
- Naturalised insects and other invertebrates
- Introduced marine pests, and
- Weeds.

Invasive species do not include species that have been deliberately introduced for the purposes of a valid and successful biological control program.

#### 4.7.1 Application of KTPs and TAPs in the context of invasive species

Invasive species are highly represented on the list of KTPs under the EPBC Act, specifically in 12 of the 17 KTPs.

---

<sup>42</sup> A list of TAPs established for KTPs listed under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/biodiversity/threatened/tap-approved.html>.

Over the life of the EPBC Act, DEWHA has invested significant resources in developing and implementing TAPs to abate the impacts of invasive species listed as KTPs under the Act. However, the list of KTPs does not amount to an exhaustive list of all invasive species present in Australia.

In response to a number of individual weed species nominated for listing as KTPs in recent years, the TSSC recommended to the Minister that a KTP for all invasive species, entitled *The introduction of novel biota and its impact on biodiversity*, be assessed. The Minister agreed to this recommendation, and the nomination will be progressed in accordance with the timeframe for the 2008 Finalised Priority Assessment List.<sup>43</sup>

#### 4.7.2 Other initiatives directed at ameliorating the impacts of invasive species

Although a substantial amount of effort and resources has been and continues to be invested in ameliorating the impact of invasive species on biodiversity through the identification and listing of KTPs and the implementation of TAPs, this mechanism is merely one in a number of Australian Government policies and programs aimed at reducing the impact of invasive species on Australia's environment and agricultural production.

To assist the Senate Committee with its inquiry, a summary of some other major initiatives directed at ameliorating the impact of invasive species is set out below:

- *AusBIOSEC* (the Australian Biosecurity System for Primary Production and the Environment) is a system directed at compiling a national framework for biosecurity activities undertaken by the Australian Government, state and territory governments, industry, landholders and other key stakeholders in primary production and the environment.
- *Australian Pest Animal Strategy* provides a national framework for co-ordinated vertebrate pest management directed at reducing the impact of vertebrate pests on the sustainability of Australia's productive capacity and on natural ecosystems. The Australian Government and State and Territory agencies are working collaboratively with a National Coordinator to implement the strategy.
- *The Australian Weeds Strategy*, which was developed by the Australian Weeds Committee, addresses the prevention of new weed problems, the abatement of existing problems, and the enhancement of our capacity to combat weed problems. The Strategy recognises that weed management is essential to the sustainable management of natural resources, the economy, the environment, human health and amenity and requires an integrated whole-of-government and community-wide approach.
- *Weeds of national significance* – In 1999 the relevant Ministerial Councils agreed to a prioritised list of 20 species, known as the Weeds of National Significance (WoNS). Since that time, the Australian, State and Territory governments have

---

<sup>43</sup> A copy of the 2008 Finalised Priority Assessment List can be obtained from the DEWHA website: <http://www.environment.gov.au/biodiversity/threatened/publications/pubs/priority-assessment-list.pdf>

been working together to implement nationally strategic actions to address these species.

#### **4.8 Land clearance**

Land clearance is the destruction of the above ground biomass of native vegetation and its substantial replacement by non-local species or by human artifacts.

While actions to manage the impacts of land clearance are not separately dealt with under the EPBC Act, they can be considered as part of the environmental impact and assessment process where a proposed action involving land clearance is likely to have a significant impact on a matter of NES (the environmental impact assessment and approvals process is discussed in Chapter 3 of this submission).

##### 4.8.1 Application of KTPs and TAPs in the context of land clearance

Land clearance is listed as a KTP under the EPBC Act. This listing was made in 2001 in recognition of the impact of land clearance on a range of listed threatened species and ecological communities.

At the time of listing land clearance as a KTP, the then Minister decided not to develop a TAP. The Minister agreed with advice provided by the TSSC that a TAP would not contribute additional threat mitigation over and above current initiatives that were in place and would be duplicative of best practice stated in the National Framework for the Management and Monitoring of Australia's Native Vegetation (the Framework).

Consistent with the EPBC Act requirement to review all no-TAP decisions every five years, the decision not to develop a TAP for the land clearance KTP is currently under review by the TSSC.

##### 4.8.2 Review of the National Framework for the Management and Monitoring of Australia's Native Vegetation

The Framework is a high level strategic document for native vegetation management in Australia which was first agreed by the then Australian and New Zealand Environment and Conservation Council (ANZECC) in 1999, and adopted and republished in 2001. It is currently being reviewed by the Natural Resource Management Standing Committee following direction from the Natural Resource Management Ministerial Committee (NRMMC).

The NRMMC recently confirmed the importance of the Framework as the national policy document for achieving a reversal in the long-term decline of Australia's native vegetation and an improvement in the condition of existing native vegetation, and directed NRMSC to finalise its review of the Framework and to report to Council in 2009. DEWHA is the Secretariat to the Review.

## 4.9 Climate change

As the Terms of Reference for this Inquiry note, climate change is likely to exacerbate challenges faced by Australia's biodiversity. There is growing evidence of observed changes in the Australian biota that are consistent with having a climate change "signal".<sup>44</sup>

The most recent report of the Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system over the past century is unequivocal, and it is very likely that anthropogenic greenhouse increases caused most of the observed increase in globally averaged temperatures since the mid-20th century.<sup>45</sup>

In the same report the IPCC also noted that global temperatures have increased on average 0.7°C during the last hundred years. Average Australian temperatures have increased by 0.9°C since 1950.<sup>46</sup> The momentum in the climate system means the Earth is committed to a further warming of around 0.4°C regardless of future human actions.<sup>47</sup>

Climate change has the potential to affect biodiversity as a result of a multiplicity of impacts including reduced water availability, and increasing temperature and CO<sub>2</sub> concentrations. These impacts will cause changes to the timing of species life cycle events, as well as influencing population dynamics and survival, extinction rates, and distribution. Additionally, flow-on effects are likely, with altered interactions between species leading to changes in abundance, and ultimately changes to the structure and function of communities<sup>48</sup>. Importantly, climate change will also exacerbate existing stressors on biodiversity, such as fire regimes and invasive species<sup>49</sup>.

In the marine environment, climate change will affect ocean currents and water temperatures; increase acidification and the incidence of storms and cyclones; and will cause sea levels to rise. These changes will impact the habitats occupied by key species

---

<sup>44</sup> *Attributing physical and biobiological impacts to anthropogenic climate change*, Rosenzweig C, Karoly D, Vicarelli M, Neofotis, Qigang W, Casessa G, Menzel A, Root T, Estrella N, Seguin B, Tryjanowski P, Liu C, Rawlins S, Imeson A, Nature (Vol 453 pp353-358), May 2008; *Implications of Climate Change for Australia's National Reserve System: A Preliminary Assessment*, Dunlop and Brown (CSIRO Sustainable Ecosystems), 2008; and *Strategic Assessment of the Vulnerability of Australia's Biodiversity to Climate Change (in prep)*, Steffen W., Hughes L., Stafford Smith M., Lindenmayer D., Burbidge A., Musgrave W., Kitching R., and Werner P.

<sup>45</sup> 'Summary for Policymakers' in *Climate Change 2007: The Physical Science Basis, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*. Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller Eds., Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

<sup>46</sup> *Climate Change in Australia – Technical Report*, CSIRO and Australian Bureau of Meteorology, 2007.

<sup>47</sup> *Attributing physical and biobiological impacts to anthropogenic climate change*, Rosenzweig C, Karoly D, Vicarelli M, Neofotis, Qigang W, Casessa G, Menzel A, Root T, Estrella N, Seguin B, Tryjanowski P, Liu C, Rawlins S, Imeson A, Nature (Vol 453 pp353-358), May 2008.

<sup>48</sup> *Implications of Climate Change for Australia's National Reserve System: A Preliminary Assessment*, Dunlop and Brown, CSIRO Sustainable Ecosystems, 2008.

<sup>49</sup> *Strategic Assessment of the Vulnerability of Australia's Biodiversity to Climate Change (in prep)*, Steffen W., Hughes L., Stafford Smith M., Lindenmayer D., Burbidge A., Musgrave W., Kitching R., and Werner P.



such as kelp, mangroves and corals, as well as the abundance and distribution of phytoplankton and zooplankton, which will have far-reaching impacts on marine food webs.<sup>50</sup>

The far ranging implications of a changing climate for biodiversity conservation are likely to require a reconsideration of many biodiversity policy and legislative frameworks, including the EPBC Act.

#### 4.9.1 Application of KTPs and TAPs in the context of climate change

'Loss of climatic habitat caused by anthropogenic emissions of greenhouse gases' is listed as a KTP under the EPBC Act. At the time the KTP was listed in 2001, the then Minister agreed with advice from the TSSC that a TAP could not effectively reduce losses of climatic habitat presented in this KTP since the internationally-distributed causal factors would continue, and that it would involve setting up further consultative bodies and duplicate consultation which had already taken place during development of the National Greenhouse Strategy.

Consistent with EPBC Act requirements to review no-TAP decisions every five years, the decision not to develop a TAP for the climate change KTP is currently under review by the TSSC.

#### 4.9.2 Other initiatives directed at ameliorating the impact of climate change on threatened species and ecological communities

For the assistance of the Committee, there are a number of significant activities that contribute to Australia's ability to manage and conserve biodiversity in a changing climate. These activities are being undertaken within the broader context of the Australian Government response to the challenge of climate change, which is to:

- reduce greenhouse pollution in Australia in the short and long term
- work with the international community to develop a global response that is effective and fair, and
- prepare for the climate change that we cannot avoid.

In summary, the following projects are underway to assess the vulnerability of Australia's biodiversity to climate change include.

#### *COAG National Climate Change Adaptation Framework*

In April 2007, COAG endorsed the National Climate Change Adaptation Framework (the Framework)<sup>51</sup> and in December 2007 it established the Working Group on Climate

---

<sup>50</sup> *Impacts of climate change on Australian Marine Life – Report to the Australian Greenhouse Office*, Hobday A.J., Okey T.A., Poloczanska E.S., Kunz T.J., and Richardson A.J. (eds), 2006; and *Climate Change and the Great Barrier Reef*, Great Barrier Reef Marine Park Authority and Australian Greenhouse Office, Johnson JE and Marshall PA (eds), 2007

<sup>51</sup> Information about the COAG National Climate Change Adaptation Framework can be obtained from: [http://www.coag.gov.au/coag\\_meeting\\_outcomes/2007-04-13/index.cfm#climate](http://www.coag.gov.au/coag_meeting_outcomes/2007-04-13/index.cfm#climate).

Change and Water (chaired by the Minister for Climate Change and Water, Senator the Hon Penny Wong) to advance a national cooperative approach to long-term adaptation, including accelerating implementation of Framework actions across all jurisdictions.

*Natural Resources Management Ministerial Council – priority actions*

The Australian Government, in consultation with the states and territories, is leading national vulnerability assessments in biodiversity, agriculture and coastal areas.

Priority actions were agreed to in 2006 by the Natural Resources Management Ministerial Council to address the impact of climate change in the areas of biodiversity, agriculture, coasts, water and communication.

A key project is the strategic assessment of the vulnerability of Australia's biodiversity to climate change. This project is being undertaken by an Expert Advisory Group chaired by Professor Will Steffen of the Australian National University.

Other related activities include an assessment of the impact of climate change on fire in areas managed for biodiversity, an assessment of the impact of climate change on water-dependent ecosystems, an assessment of the impact of climate change on the National Reserve System (released March 2008), and a national scoping study of climate change impacts on natural resource management regions.

*Climate Change Adaptation Plan*

The Australian Government has committed to develop a Climate Change Adaptation Plan for Iconic Areas to protect Australia's iconic and World Heritage Areas from climate change. The Adaptation Plan will outline research, management and monitoring measures to incorporate climate change into planning and managing identified sites.

DEWHA has responsibility for implementation of this election commitment and will coordinate development of the Plan with relevant interests.

*National Coastal Vulnerability Assessment*

The Australian Government is working with the states and territories on a 'first pass' National Coastal Vulnerability Assessment. The Coastal Vulnerability Assessment will consider the impacts of climate change on key assets within Australia's coastal zone, including settlements and infrastructure, biodiversity, and the coastline itself, and will be completed by the end of 2008.

*National Strategy for the Conservation of Australia's Biological Diversity*

The National Strategy for the Conservation of Australia's Biological Diversity, which fulfills in part Australia's obligations under the United Nations Convention on

Biological Diversity to develop national strategies, plans or programs for the conservation and sustainable use of biodiversity, is currently under review. DEWHA is the Secretariat to the Review. The draft revised national biodiversity strategy, which will be available for public consultation by end 2008, identifies rapid climate change as a critical threat to biodiversity conservation. In recognising that climate change is one of the major challenges facing Australia biodiversity conservation planners and managers, the draft revised strategy incorporates activities to enhance the management of climate risk to Australia's biodiversity in addition to a range of other threatening processes.

#### **4.10 Migratory, cetacean and marine species – listing and protection under the EPBC Act**

There are a number of mechanisms in the EPBC Act directed specifically toward the conservation, protection and management of migratory, cetacean and marine species.

Divisions 2, 3 and 4 of Part 13 of the EPBC Act contain provisions for the identification, listing and protection of migratory species, cetaceans and marine species.

##### 4.10.1 Listing of migratory species under the EPBC Act

Migratory species are animals that migrate to Australia and its external territories, or pass through or over Australian waters during their annual migration. They include species of birds (e.g., albatrosses), mammals (e.g., whales) and reptiles (e.g., turtles).

Under section 209 of the EPBC Act the Minister must establish a list of migratory species. The migratory species list is made up of the species included in:

- the appendices of the Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention)
- the annexes of the Japan-Australia Migratory Bird Agreement (JAMBA)
- the China-Australia Migratory Bird Agreement (CAMBA), and
- the Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA).

##### 4.10.2 Statistics on listed migratory species

A list of the migratory species listed under the EPBC Act can be obtained from the DEWHA website: <http://www.environment.gov.au/biodiversity/migratory/list.html>.

##### 4.10.3 Protection of listed migratory species under the EPBC Act

If a species is listed as a migratory species under the EPBC Act, it is provided with protection under the Act. These protections include specific criminal offences under Division 2 of Part 13 of the Act for harming a listed migratory species. They also include the criminal and civil sanctions that can apply where an action that is likely to have a significant impact on a matter of NES is taken without approval or authorisation under the Act—this is because listed migratory species are one of the matters of NES under the EPBC Act.

#### 4.10.4 Listing of cetaceans under the EPBC Act

'Cetacean' is the scientific name which refers to whales, dolphins and porpoises. Under section 528 of the EPBC Act cetaceans are defined as any member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and specifically include:

- a part of such a member
- any animal reproductive material of such a member, or any part of such reproductive material
- any product derived from such a member
- the whole or part of the dead body of such a member, and
- any product derived from the dead body, or part of the dead body, of such a member.

#### 4.10.5 Protection of cetaceans under the EPBC Act

Cetaceans are given specific protection under the EPBC Act in relation to the establishment of the Australia Whale Sanctuary (described at paragraph 4.11 of this submission) and permitting (described at paragraph 4.12 of this submission).

Certain cetaceans are also listed threatened species and/or migratory species under the EPBC Act, for example the Blue and Southern Right Whales which are listed as endangered. In all Australian waters, including state and territory waters, EPBC Act regulates actions that will have, or are likely to have, a significant impact on listed threatened and migratory species. Proposed actions that may have a significant impact on any of these species should be referred to the Minister for a decision about whether the action requires environmental assessment and approval under the EPBC Act.

In addition, cetaceans can be found in Commonwealth marine areas, which is also a matter of NES. Actions proposed to be taken in a Commonwealth marine area that have, will have or is likely to have a significant impact on the environment, and any actions taken outside a Commonwealth marine area that has, will have or is likely to have a significant impact on the environment in a Commonwealth marine area, must not be taken without approval or authorisation under the EPBC Act.

As noted earlier in this submission, criminal, civil and administrative penalties can apply for taking an action that is likely to have a significant impact on a matter of NES without approval or authorisation under the Act. The Policy Guidelines published by DEWHA provide assistance in assessing the significance of a proposed action. Under the Guidelines, an action is likely to have a significant impact on the environment in a Commonwealth marine area if there is a real chance or possibility that it will have a substantial adverse effect on a population of marine species or cetacean including its life cycle and spatial distribution.<sup>52</sup> The assessment and approval process for actions that are likely to have a significant impact on a matter of national environmental significance is discussed in detail in Chapter 3 of this submission.

---

<sup>52</sup> Policy Guidelines 1.1, *Significant Impact Guidelines: Matters of National Environmental Significance*, 2006.

Division 3 of Part 13 of the EPBC Act also creates specific criminal offences for harming and possessing cetaceans and establishes the 'Australian Whale Sanctuary'. Further information on the Sanctuary is provided below at paragraph 4.11 of this submission.

#### 4.10.6 Listing of marine species under the EPBC Act

Under section 248 of the EPBC Act the Minister must establish a list of marine species. In deciding whether to add or remove a species to or from the list of marine species under the EPBC Act, the Minister must obtain and consider advice from the TSSC on the specific aspects of the addition or removal of the species from the list.

#### 4.10.7 Statistics on listed marine species

A list of the marine species listed under the EPBC Act can be obtained from the DEWHA website:

<http://www.environment.gov.au/coasts/species/marine-species-list.html>.

The species on the marine list are identified as the species, families and classes of animals listed under section 248 of the Act.

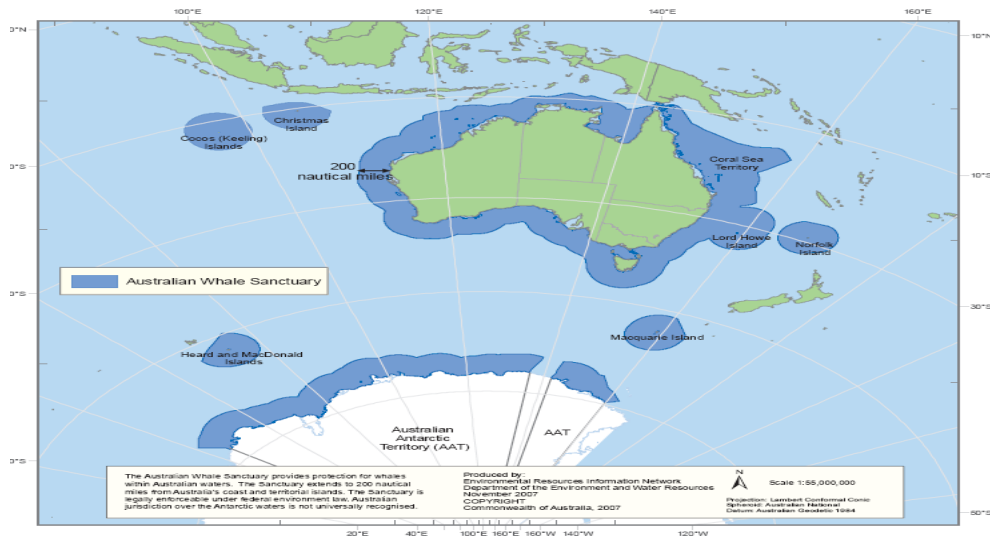
#### 4.10.8 Protections for listed marine species under the EPBC Act

If a species is listed as marine species under the EPBC Act, it is provided with protection under the Act. These protections include specific criminal offences under Division 4 of Part 13 of the Act for harming a listed marine species in a Commonwealth area.

Certain listed marine species are also listed threatened or migratory species under the EPBC Act and as such are afforded protection as a matter of NES under the Act. In addition, listed marine species can also be found in Commonwealth marine areas, which are also a matter of NES. Therefore, the criminal offences and civil penalties under Part 3 of the EPBC Act can also apply to protect marine species when actions likely to have a significant impact on a matter of NES (for example, if the marine species is found in a Commonwealth marine area) are taken without approval or authorisation under the Act.

### **4.11 The Australian Whale Sanctuary**

The EPBC Act provides a high level of protection and management of all cetaceans in Commonwealth marine areas through the establishment of the Australian Whale Sanctuary. The Sanctuary includes all Commonwealth waters from the three nautical mile state waters limit out to the boundary of the Exclusive Economic Zone (that is, out to 200 nautical miles and further in some places). A map which identifies the area of the Australian Whale Sanctuary is provided below.



The EPBC Act makes it an offence to kill, injure or interfere with a cetacean within the Australian Whale Sanctuary. Severe penalties apply to anyone convicted of such offences.

#### 4.12 Permit system for migratory, cetacean and marine species

Permits are required to take certain actions with respect to cetaceans, listed marine species or listed migratory species under Part 13 of the EPBC Act.

In particular, permits are required for actions in Commonwealth areas that may result in killing, injuring, taking, trading, keeping or moving a member of a listed migratory species, or a listed marine species.

In the Australian Whale Sanctuary and for Australians and Australian vessels in waters beyond the Sanctuary (that is, in international or foreign waters) an EPBC Act permit must be obtained to injure, take, keep, move, interfere with (harass, chase, herd, tag, mark or brand) a cetacean and to possess or treat (divide or cut up, or extract any product from, the cetacean) a cetacean. Failure to take such actions without a permit is a criminal offence under Part 13 of the EPBC Act.

The Minister cannot issue a permit to allow someone to kill a cetacean or take a cetacean for live display. Such actions are also offences under the EPBC Act.

A permit is not required for whale and dolphin watching in the Australian Whale Sanctuary, provided the action is taken in accordance with the EPBC Regulations.

The Minister may also exempt a person proposing to take an activity from the requirement to obtain a permit if it is in the national interest.

The EPBC Act also removes the requirement to obtain a permit in cases where other provisions under the Act apply or have been satisfied, including where:

- the action has been approved under Part 9 of the Act

- the action is provided for, and undertaken in accordance with, a recovery plan for the species
- there is an emergency involving a serious threat to human life or property
- the action is reasonably necessary to relieve, or prevent, suffering of the animal, or
- the action is taken in accordance with a fisheries management plan, regime or policy that has been accredited under Part 13 of the EPBC Act. To accredit, the Minister must be satisfied that the plan, regime or policy requires persons engaged in fishing to take all reasonable steps to ensure that members of species listed under Part 13 of the EPBC Act (other than conservation dependent species) are not killed or injured as a result of fishing, and that the fishery is not likely to adversely affect the survival or recovery in nature of a listed threatened species, or the conservation status of any other listed species or population of that species.

Actions undertaken in these circumstances must, however, be reported to the Minister.

#### 4.12.1 Statistics on permits relating to cetaceans

A total of 43 EPBC Act permits were issued for activities relating to cetaceans to the end of 2007-08. The permits issued have been to 'interfere' with a cetacean and the majority of these have been granted for research purposes.

#### **4.13 Conservation Plans for migratory, cetacean, marine and conservation dependent species**

Under Division 5 of Chapter 13 of the EPBC Act, the Minister may decide to make a Wildlife Conservation Plan (WCP) for listed migratory species, listed marine species, species of cetaceans and conservation dependent species. The Minister may also adopt a plan prepared by a state/territory, modified as necessary, as a WCP under the EPBC Act. However, the Minister must not make a WCP for a species that is a listed threatened species unless that species is listed as conservation dependent. The management of listed threatened species in categories other than conservation dependent is addressed through conservation advices and recovery plans, which were discussed earlier in this submission.

WCPs must provide for research and management actions necessary to support the survival of the relevant listed migratory, cetacean, marine or conservation species. In making a WCP, the Minister must have regard to, among other things, the most efficient and effective use of the resources allocated for conservation of migratory, cetacean, marine or conservation dependent species under the EPBC Act.<sup>53</sup>

The Minister must consider the advice of the TSSC and consult with the public before making a WCP under the EPBC Act. WCPs made under the EPBC Act must be reviewed every five years.

---

<sup>53</sup> EPBC Act, s.287.

#### 4.13.1 Statistics on WCP under the EPBC Act

The *Wildlife Conservation Plan for Migratory Shorebirds* is the first WCP developed under the EPBC Act. It covers 36 species of migratory shorebirds and now in its third year of implementation.

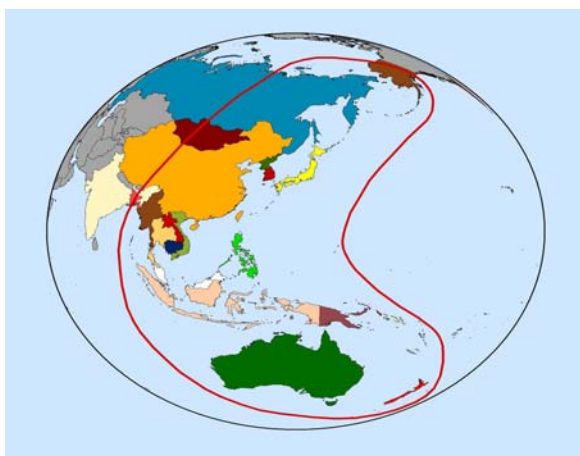
The Plan outlines national activities to support flyway-wide shorebird conservation initiatives and provides a strategic framework to ensure these activities plus future research and management actions are integrated and remain focused on the long-term survival of migratory shorebird populations and their habitats.

The Plan also builds on a wide range of activities that Australia has been involved in to promote the conservation of migratory shorebirds, both within Australia and across the East Asian - Australasian Flyway for more than a decade.

A diagrammatic representation of The East Asian –Australasian Flyway is provided below.

A WCP for dugongs is also being developed. This Plan will build on existing dugong protection measures and will assist in the coordination of local, state, national and international conservation and management activities.

#### **Diagram of the East Asian–Australasian Flyway**



#### **4.14 Biological resources**

The value of genetic resources is being increasingly acknowledged worldwide. To ensure economic, social and environmental benefits can be gained from Australia's biotechnology by future generations it is necessary to manage access to those resources.

To do this for Commonwealth areas, Part 8A of the EPBC Regulations was introduced in accordance with section 301 of the EPBC Act to manage the sustainable access and



equitable distribution of benefits derived from native genetic and biochemical resources.

The Regulations relate only to the taking of biological resources of native species for research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resource.

Part 8A of the EPBC Regulations apply in Commonwealth areas and do not apply to the taking of resources for any other purpose, including fishing for commerce or recreation, taking essential oils from plants or taking wild animals or plants for food.

#### 4.14.1 Permits for access to biological resources

Regulation 8A.06 of the EPBC Regulations provides that biological resources in a Commonwealth area can only be accessed in accordance with a permit issued under Part 17 of the Regulations.

Under the regulations, a party seeking access to biological resources in a Commonwealth area must apply for an access permit to be issued by the Minister. The Minister can issue the permit if satisfied, among other things, that:

- the proposed access would be ecologically sustainable and consistent with the conservation of Australia's biodiversity, and
- where access is for a non-commercial purpose, the access provider (owner/manager of the area) has given permission, or
- where access is for a commercial or potential commercial purpose, there is a benefit-sharing agreement with the access provider which addresses the following major issues:
  - mutually agreed terms
  - adequate benefit-sharing arrangements including, that if practicable, some benefits would be used for biodiversity conservation in the area from which the resource was obtained, and
  - where applicable prior informed consent of any Indigenous owners of biological resources has been obtained and full disclosure made of any use of Indigenous knowledge and the terms on which that knowledge is to be used.

#### 4.14.2 Statistics on permits and benefit-share agreements for accessing biological resources

Since Part 8A of the EPBC Regulations was added in December 2005, a total of 115 access permits have been issued by DEWHA and accredited agencies.

Four benefit-sharing agreements have been finalised for commercial research.

#### 4.15 Regulation of Wildlife Trade

Part 13A of the EPBC Act controls the export of Australian native wildlife and wildlife products; the import of live specimens; and the import and export of all wildlife internationally recognised as 'threatened by trade' under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), to which Australia is a party.

DEWHA administers the wildlife trade provisions in Part 13A of the EPBC Act and is responsible for coordinating enforcement of this regulatory regime. DEWHA does so with cooperation from other Australian Government agencies as well as international, State and Territory wildlife and enforcement agencies and non-government agencies interested in protecting wildlife. DEWHA has a Memorandum of Understanding with the Australian Customs Service (Customs), which is responsible for the detection and investigation of wildlife trade offences at Australia's borders. DEWHA also works with the Australian Quarantine and Inspection Service (AQIS) and Biosecurity Australia on these issues.

##### 4.15.1 Wildlife trade permits

Permits are generally required under the EPBC Act to:

- export specimens of or derived from native species not on the List of Exempt Native Specimens
- import live plants or animals included in part 2 of the list of specimens suitable for live import, or
- import or export CITES listed specimens.

##### 4.15.2 Wildlife trade programs

Under Part 13A of the EPBC Act, the following are permitted only where specimens are derived from an approved source:

- commercial export of regulated native specimens (i.e. specimens that are, or are derived from, a native animal or plant, but which are not listed on the List of Exempt Native Specimens)
- commercial import or export of species listed on CITES Appendix I, commercial export of species listed on CITES Appendix II, and
- commercial import of declared specimens of species listed on CITES Appendix II.

Approved sources are:

- wildlife trade management plans
- wildlife trade operations
- artificial propagation programs
- captive breeding programs
- aquaculture programs, and
- commercial import programs.

The EPBC Act also provides for the export or import of wildlife, including CITES specimens, for non-commercial purposes. Eligible non-commercial purposes include research, education, exhibition, conservation breeding or propagation, a travelling exhibition or as a household pet or a personal item. Strict conditions must be met for the export or import to qualify as one of these eligible purposes. DEWHA undertakes these assessments.

The import or export of CITES Appendix I listed specimens to zoos for the purpose of conservation breeding cannot be permitted unless the animal is going into an approved Cooperative Conservation Program for that species.

The EPBC Regulations require that “for a live export of a koala, platypus, wombat or Tasmanian devil, or an animal of an eligible listed threatened species, the exporter, the importer and DEWHA must enter into an agreement about the treatment and disposal of the animal and any progeny”.<sup>54</sup> The Agreement is referred to as an Ambassador Agreement and covers all animals of that species held at the recipient zoo (not just those involved in the export).

#### 4.15.3 Sustainable wildlife industries

Wildlife trade management plans and wildlife trade operations approved under the EPBC Act govern the sustainable wild harvest of wildlife and the humane treatment of animals.

In the period since the inclusion of Part 13A in the EPBC Act (January 2002), until 30 June 2008, 19 wildlife trade management plans have been approved. This includes plans for the commercial harvest of kangaroos in Queensland, New South Wales, South Australia and Western Australia, and the sustainable harvest of tree ferns in Tasmania. Thirty six wildlife trade operations have also been established during that period. These figures do not include commercial fisheries.

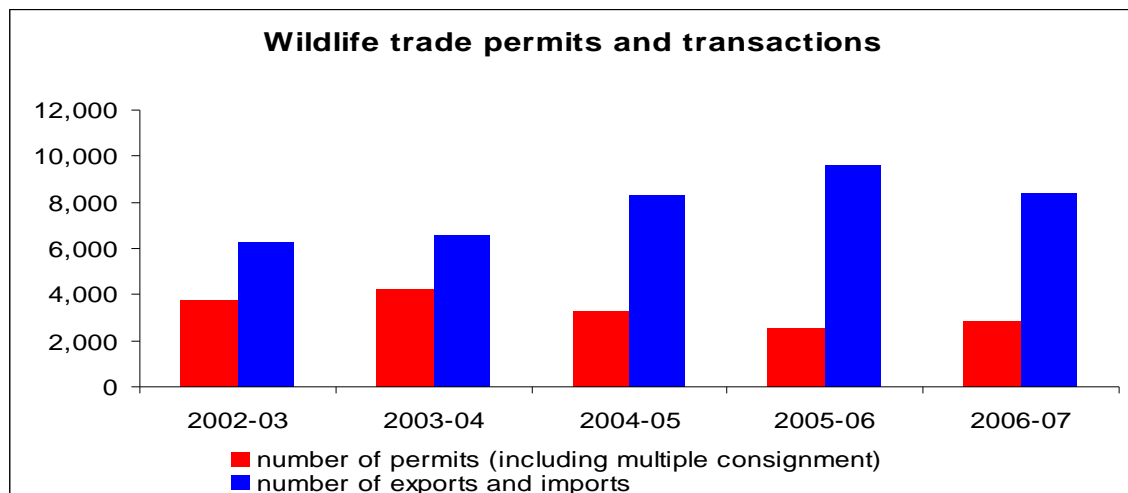
#### 4.15.4 Multiple consignment permits

In response to feedback from wildlife industry operators, DEWHA introduced measures to lower the costs and administrative resources required to comply with international wildlife trade regulation. Specifically, multiple consignment permits, which allow business operators to make a number of shipments under the one permit are now available. This has significantly reduced the number of permits needed by industry while enabling the number of export and import transactions to increase (for example, see the graph below).

---

<sup>54</sup> EPBC Regulations, Regulation 9A.10.

#### 4.15.5 Wildlife trade transactions from 2002–03 to 2006-07



Note: The above graph does not include 2007-08 statistics as acquittal information is not yet available.

#### 4.15.6 Statistics on the number of wildlife trade permits issued

During the period 2002-03 to 2007-08, DEWHA issued 18,983 international wildlife trade permits for both commercial and non-commercial purposes.

#### 4.15.7 Wildlife trade permit reviews

DEWHA also administers a program of international wildlife trade permit reviews. This is directed at ensuring effective regulation of international wildlife trade. Under this program, a sample of permits is assessed to measure the level of compliance by permit holders with conditions that are attached to permits.

Permit conditions are designed to ensure international wildlife trade is conducted at a level that is not detrimental to the survival of species in the wild. Under the program DEWHA communicates its findings to the permit holder and recommends appropriate remedial action where necessary.

Permit reviews are being conducted across industry sectors where international wildlife trade occurs. These include traditional medicines, food, cut flowers, clothing, timber, animal hides and hunting trophies.

#### 4.15.8 Education and awareness activities

As noted earlier, DEWHA works closely with Customs in regulating international wildlife trade. Under an established Memorandum of Understanding, Customs provides a range of border and post-border enforcement services, in partnership with DEWHA, and DEWHA provides training and information to Customs Officers and Australian Quarantine and Inspection Service staff.

DEWHA also undertakes a range of targeted education and awareness activities aimed at increasing compliance with, and awareness of, international wildlife trade regulation. Such activities include:

- Working in partnership with the Australian Acupuncture and Chinese Medicine Association (AACMA) to launch the AACMA Endangered Species Certification Scheme in May 2008. The scheme recognises practitioners, traders and users of complementary medicines who ensure they do not use endangered species in their complementary medicines, and to promote compliance with wildlife trade laws, and
- Support of the World Society for the Protection of Animals Bear Bile Detection Kits project. The Department facilitated the distribution and testing of products thought to contain bear bile using the society's kits to enhance border security measures that are already in place.

Seized forfeited specimens are also at times loaned to institutions such as universities, museums, zoos and aquaria for education or research purposes.

#### **4.16 Fisheries assessments under the EPBC Act**

Under the EPBC Act, all Commonwealth-managed fisheries and State and Territory fisheries that export product are required to undergo assessment. Assessments may also consider the impacts of fishing activities on particular species protected under the Act. The purpose of conducting fisheries assessments under the EPBC Act is to ensure that, over time, fisheries are managed in an ecologically sustainable way and to identify areas for improvement.

DEWHA assesses the environmental performance of fisheries management arrangements and manages the assessment processes, in particular:

- the strategic assessment of Commonwealth-managed fisheries under Part 10 of the EPBC Act
- assessments relating to impacts on protected species under Part 13 of the EPBC Act, and
- assessments for the purpose of export approval under Part 13A of the EPBC Act.

All fishery assessments are conducted in accordance with the *'Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd edition'*.<sup>55</sup> The Guidelines focus on two key principles:

1. fisheries must be conducted in a manner that does not lead to over fishing or, where already over fished, will lead to stock recovery, and
2. fisheries must be managed so as to minimise ecosystem impacts.

Fishery assessments are used to determine the extent to which management arrangements ensure fisheries are managed in an ecologically sustainable way. They

---

<sup>55</sup> A copy of the Guidelines can be obtained from the DEWHA website:  
<http://www.environment.gov.au/coasts/fisheries/publications/guidelines.html>.

are directed at improving fisheries management arrangements by identifying environmental protection measures and requiring fisheries management agencies to demonstrate improved environmental performance over time.

Because each fishery is unique the assessment process is designed to facilitate the best outcome for that fishery.

The fisheries management process includes an ongoing flow of communication between fisheries management agencies and DEWHA, including through reporting and periodic reassessment.

As a result of the fisheries assessments conducted under the EPBC Act, conditions and recommendations are agreed between DEWHA and fisheries management agencies. These conditions and recommendations require the fisheries management agencies to demonstrate improved environmental performance and actively enhance the ecologically sustainable management of fisheries in the short to medium term.

#### 4.16.1 Statistics on fisheries assessments under the EPBC Act

A total of 20 Commonwealth-managed fisheries have undergone strategic assessment under the Act.<sup>56</sup>

A total of 102 State and Territory fisheries have undergone assessment under the EPBC Act.<sup>57</sup>

A total of 51 fisheries have been comprehensively assessed for the second time including nine Commonwealth-managed fisheries and 42 state-managed fisheries, as at 30 June 2008. These assessments were completed within statutory timeframes and each received export approval.

The Joint Authority Northern Shark Fishery had its existing export approval revoked in 2007–08, the first time this power has been exercised under the EPBC Act.

It is anticipated that a further 45 fisheries will be re-assessed in 2008–09.

#### **4.17 Forest Framework**

The 1992 National Forest Policy Statement (NFPS) sets out agreed principles between the Australian Government and the State and Territory governments<sup>58</sup> for the use of Australia's forests. It includes conservation and environmental principles. The NFPS also established three broad goals for native forest management:

- to maintain an extensive and permanent forest estate in Australia

---

<sup>56</sup> A list of Commonwealth-managed fisheries and the assessment documentation is available on the DEWHA website: <http://www.environment.gov.au/coasts/fisheries/commonwealth/index.html>.

<sup>57</sup> A list of the State and Territory fisheries and the assessment documentation can be accessed from the DEWHA website: <http://www.environment.gov.au/coasts/fisheries/index.html>.

<sup>58</sup> Tasmania agreed in 1995.

- to manage that estate in an ecologically sustainable manner, and
- to develop internationally competitive and ecologically sustainable forest-based industries that maximise value-adding opportunities and efficient use of resources.

The NFPS required the completion of joint Commonwealth-State regional assessments of the environmental, heritage, economic and social values of forests. These assessments ultimately formed the basis of negotiated Regional Forest Agreements (RFAs) between the Australian Government and four State governments, recognised under the *Regional Forest Agreements Act 2002* (RFA Act).

#### 4.17.1 RFAs

The Australian Government Department of Agriculture, Fisheries and Forestry is the lead Australian Government agency responsible for RFAs. DEWHA has responsibility for matters relating to the EPBC Act.

DEWHA understands that DAFF will be making a separate submission to the Inquiry which will provide information about RFAs and the RFA Act.

#### 4.17.2 Forests and the EPBC Act

Under section 40 of the EPBC Act 'forestry operations' is defined to include any of the following done for commercial purposes:

- Planting trees
- Managing trees before they are harvested
- Harvesting forest products – which includes live or dead trees, ferns or shrubs, or parts thereof, and
- includes any related land clearing, land preparation and regeneration (including burning) and transport operations.

This definition is mirrored in the RFA Act.

Under section 38 of the EPBC Act, forestry operations undertaken in an area covered by an RFA are exempt from the EIA and approval regime under the EPBC Act.<sup>59</sup> The Explanatory Memorandum for the Regional Forest Agreements Bill 2002 provides an explanation for adopting this approach—forest operations in regions subject to RFAs have been excluded from the scope of the EPBC Act because the RFAs, which were concluded following comprehensive assessments of the environmental and heritage values of these regions, themselves provide an agreed framework for ecologically sustainable forest management in these regions over the next 20 years.

---

<sup>59</sup> See also subsection 6(4) of the RFA Act.

## 5 MANAGING PROTECTED AREAS

The EPBC Act identifies areas that are 'protected areas' under the Act and the processes by which an area is listed or recognised as a protected area.

Areas are protected under the EPBC Act for several reasons:

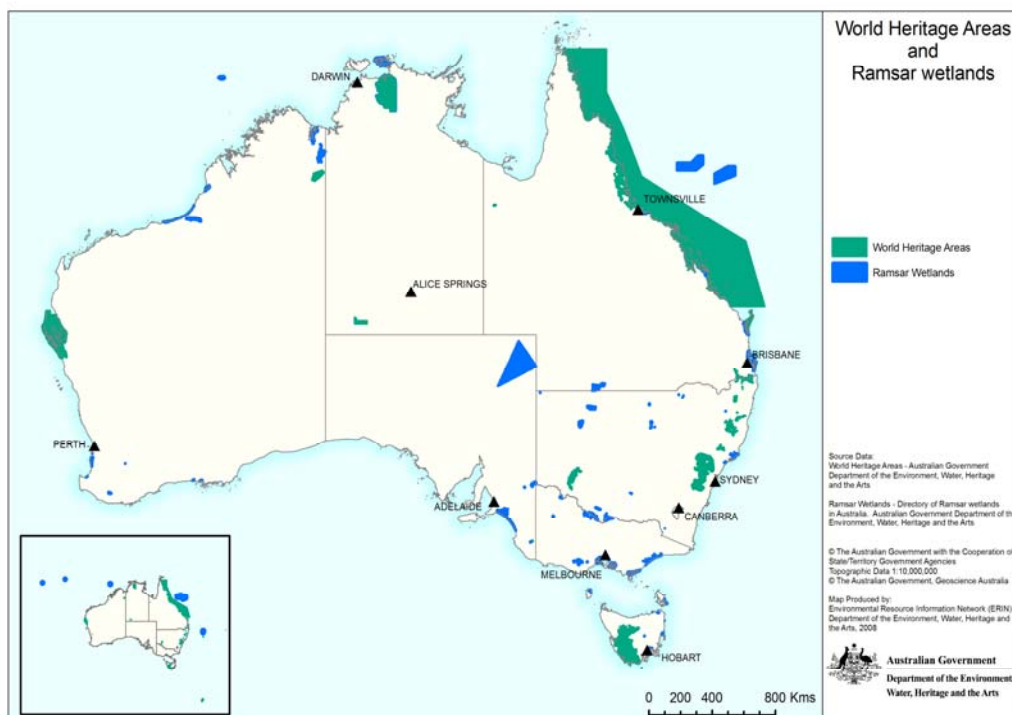
- the protection of World Heritage properties and wetlands of international importance (Ramsar wetlands) reflect Australia's international obligations
- places with National or Commonwealth Heritage places are protected because of their heritage values, and
- Commonwealth and biosphere reserves are protected because of their heritage or ecological significance and the management of these areas is guided by national and international programs and policies.

As discussed earlier in this submission, the EPBC Act regulates impacts on matters of NES. This Chapter of the submission relates particularly to four of these matters:

- World Heritage values
- National Heritage values
- the ecological character of Ramsar wetlands, and
- the Commonwealth marine environment.

As noted earlier in this submission, by virtue of their recognition as a matter of NES, any proposed action that has, will have, or is likely to have a significant impact on world heritage values, national heritage values, the ecological character of a Ramsar wetland or a Commonwealth marine area must be referred to the Minister (or delegate) for a determination as to whether the action requires assessment and approval under the EPBC Act. Substantial penalties can apply for taking actions without approval.

A map showing Australian World Heritage Areas and Ramsar wetlands is provided below.





## 5.1 Heritage

The EPBC Act protects heritage areas because their values are significant to Australia's culture and history. Provisions for the listing and management of protected areas were inserted into the EPBC Act for several reasons, including:

- to assign responsibility for identifying, protecting and managing heritage places to the appropriate level of government
- to ensure that heritage management systems are compatible, complementary and streamlined across all levels of government to minimise duplication and provide certainty to property owners, decision makers and the community
- to ensure that nationally-significant heritage places are identified and protected, and
- to facilitate the protection of places of heritage significance on Commonwealth land (other than sites of national significance).<sup>60</sup>

### 5.1.1 World Heritage

Part 15 of the EPBC Act provides the legal framework for meeting Australia's obligations under the *Convention Concerning the Protection of World Cultural and Natural Heritage*.

Of the 17 Australian places inscribed in the World Heritage List, 11 are regarded as having outstanding universal value because of their biodiversity. These places are inscribed because they are significant representatives of ongoing evolution and development of ecosystems and plant and animal communities, or because they contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the standpoint of science or conservation.<sup>61</sup>

Currently, there are 42,542,789 hectares of Australia listed as World Heritage for natural values, of which 7,678,692 hectares is terrestrial.

World Heritage properties with biodiversity values are also part of the National Reserve System and some properties may contain Ramsar listed wetlands of international importance.

### 5.1.2 National Heritage

Part 15 of the EPBC Act provides for a National Heritage List of places considered to be of outstanding value to the nation.

---

<sup>60</sup> Explanatory Memorandum to the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, p. 5.

<sup>61</sup> A list of Australian places on the World Heritage List can be obtained from the DEWHA website: <http://www.environment.gov.au/heritage/places/world/index.html>.

There are currently 20 places on the National Heritage List that have natural heritage values related to the conservation of biodiversity.<sup>62</sup> Included in this list are the 11 World Heritage Listed places.

The total area that is National Heritage Listed for biodiversity values is 45,080,989 hectares (7,667,334 hectares is terrestrial).

### 5.1.3 Commonwealth Heritage

Part 15 of the EPBC Act provides for a Commonwealth Heritage List which identifies places owned or leased by the Commonwealth or a Commonwealth Authority which are of significance to the Commonwealth.

There are currently 342 places on the Commonwealth Heritage List and they are predominantly places of historic heritage value.<sup>63</sup>

If an action is likely to have a significant impact on the environment on Commonwealth land, it is a 'controlled action' and requires assessment and approval under the EPBC Act.

Australian Government agencies are required to develop heritage strategies for the protection and conservation of their heritage assets.

## **5.2 Wetlands of international importance (Ramsar wetlands) and biosphere reserves**

### 5.2.1 Ramsar wetlands

Ramsar wetlands are wetlands that are representative, rare or unique or are important for conserving biological diversity. They are recognised on the 'List of Wetlands of International Importance', which is kept under Article 2 of the *Ramsar Convention*.

Part 15 of the EPBC Act specifies arrangements for managing and preserving Ramsar wetlands. These arrangements also find their basis in the *Ramsar Convention*.<sup>64</sup>

In summary, Division 2 of Part 15 of the EPBC Act:

- requires the Minister to make and implement management plans for Ramsar wetlands entirely within one or more Commonwealth areas
- empowers the Minister to cooperate with a State or Territory to prepare and implement management plans for Ramsar wetlands in a State or Territory, and
- empowers the Minister to provide financial or other assistance for the protection or conservation of Ramsar wetlands.

---

<sup>62</sup> A list of places on the National Heritage List can be obtained from the DEWHA website: <http://www.environment.gov.au/heritage/places/national/index.html>.

<sup>63</sup> A list of places on the Commonwealth Heritage List can be obtained, by jurisdiction, from the DEWHA website: <http://www.environment.gov.au/heritage/places/commonwealth/index.html>.

<sup>64</sup> *Convention on Wetlands*, done at Ramsar on 2 February 1971 and as amended from time to time.

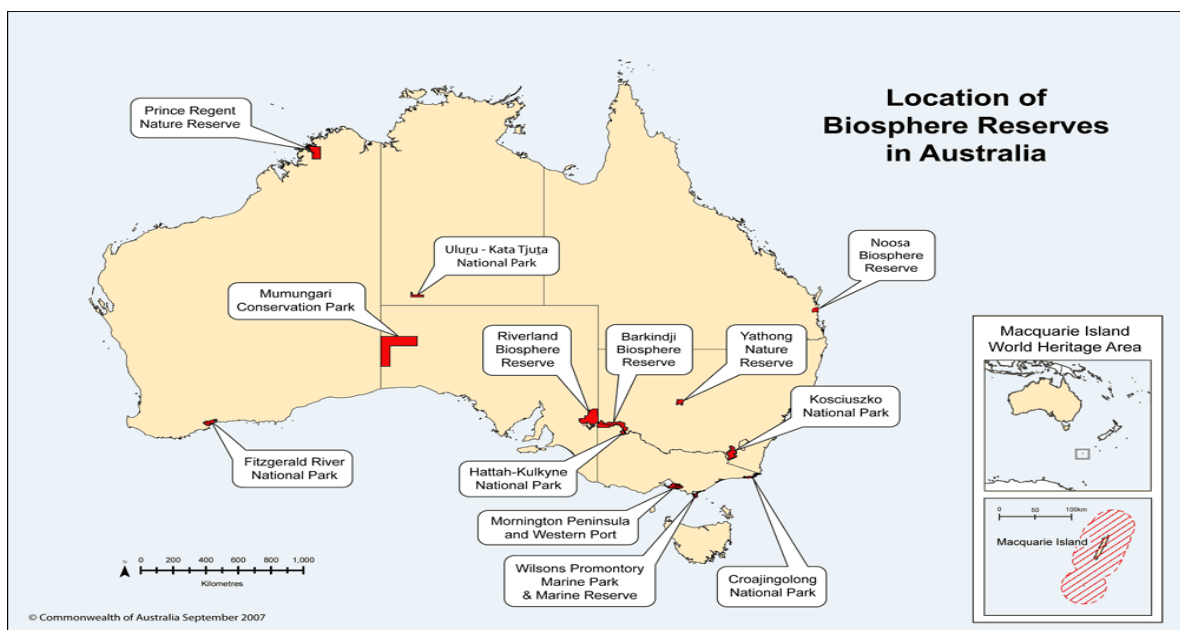
Management plans must not be inconsistent with Australia's obligations under the *Ramsar Convention* and the 'Australian Ramsar management principles' set out in Schedule 6 to the EPBC Regulations. These plans should, among other things, describe the ecological character of the wetland and promote the conservation and sustainable use of the wetland for the benefit of humanity in a manner that is compatible with maintenance of the natural properties of the ecosystem.<sup>65</sup>

There are currently 65 Ramsar wetlands in Australia.<sup>66</sup> The wetland most recently added to the list is the Paroo River Wetlands in New South Wales..

### 5.2.2 Biosphere Reserves

Section 337 of the EPBC Act provides that a 'biosphere reserve' is an area designated for inclusion in the World Network of Biosphere Reserves. They are protected areas and surrounding lands that are managed to combine the conservation and sustainable use of natural resources. Each biosphere reserve conserves examples of characteristic ecosystems which are managed for protection and study.

There are 14 biosphere reserves in Australia. These are identified in the map below.<sup>67</sup>



Division 3 of Part 15 of the EPBC Act empowers the Minister to:

- make and implement management plans for biosphere reserves entirely within one or more Commonwealth areas

<sup>65</sup> A copy of the EPBC Regulations can be obtained from: <http://www.comlaw.gov.au>.

<sup>66</sup> A list of the Ramsar wetlands in Australia can be obtained from the DEWHA website: <http://www.environment.gov.au/water/environmental/wetlands/ramsar/australia.html>.

<sup>67</sup> A list of biosphere reserves in Australia can also be obtained from the DEWHA website: <http://www.environment.gov.au/parks/biosphere/index.html>.

- cooperate with a State or Territory to prepare and implement management plans for biosphere reserves in the relevant State or Territory, and
- provide financial or other assistance for the protection or conservation of a biosphere reserve.

Management plans must not be inconsistent with the 'Australian Biosphere reserve management principles' set out in Schedule 7 to the EPBC Regulations. These principles require that management plans must, among other things, identify the values for which the biosphere reserve is established and include a statement of the role of the reserve in contributing to national coverage of ecological systems representative of major bioregions.<sup>68</sup>

### 5.3 Commonwealth reserves and conservation zones

#### 5.3.1 Commonwealth Reserves

Commonwealth reserves are established by a Proclamation made under the EPBC Act. Proclamations may be made over an area of land or sea that is:

- owned or leased by the Commonwealth
- in a Commonwealth marine area, or
- outside Australia that Australia has international obligations to protect.

Each Commonwealth reserve must be assigned to one of the International Union for Conservation of Nature (IUCN) protected area categories. This assignment affects how the reserve can be managed and used under the EPBC Act. Schedule 8 of the EPBC Regulations prescribes the management principles for each IUCN category.<sup>69</sup>

Under Division 4 of Part 15 of the EPBC Act, a management plan must be prepared for each Commonwealth reserve. These plans must provide for the protection and conservation of the reserve and must be consistent with the relevant IUCN category management principles prescribed in the EPBC Regulations.<sup>70</sup>

Commonwealth reserves are managed by the Director of National Parks, which is a statutory authority established under the EPBC Act. In the case of Commonwealth reserves that include Indigenous land (Booderee, Kakadu and Uluru-Kata Tjuta National Parks), a Board of Management must be established which is comprised of a majority of members nominated by the Indigenous owners.

There are currently 35 Commonwealth reserves established under the Act:

- six National Parks
- two Botanic Gardens, and
- 27 marine reserves.

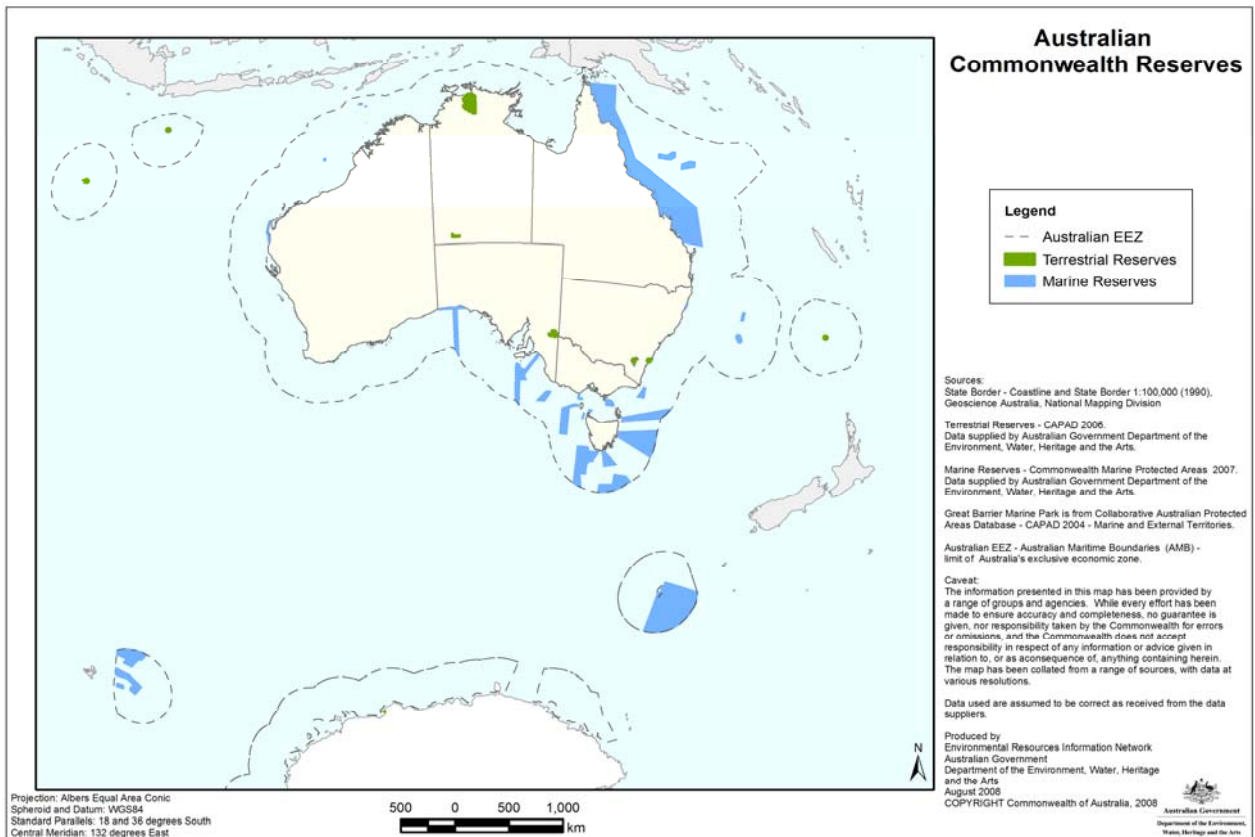
---

<sup>68</sup> A copy of the EPBC Regulations can be obtained from: <http://www.comlaw.gov.au>.

<sup>69</sup> A copy of the EPBC Regulations can be obtained from: <http://www.comlaw.gov.au>.

<sup>70</sup> EPBC Act, s.367.

The 35 Commonwealth reserves are identified in the map below (along with the Great Barrier Reef Marine Park, which is managed under the *Great Barrier Reef Marine Park Act 1975*).



### 5.3.2 Conservation zones

Under Division 5 of Part 15 of the EPBC Act, a Commonwealth area can be proclaimed to be a 'conservation zone'. The purpose of proclaiming a conservation zone is to provide interim protection for biodiversity and other natural features and heritage in the Commonwealth area while the area is being assessed for inclusion in a Commonwealth reserve. An area will cease to be a conservation zone if it is proclaimed to be a Commonwealth reserve.

The types of activities that can be taken in a conservation zone are regulated under Part 13 of the EPBC Regulations.<sup>71</sup>

One conservation zone is currently established under the EPBC Act, adjoining the Heard Island and MacDonal Islands Marine Reserve.

<sup>71</sup> A copy of the EPBC Regulations can be obtained from: <http://www.comlaw.gov.au>.

### 6.1 Compliance and enforcement tools

The EPBC Act includes a monitoring and audit, compliance and enforcement framework which provides a broad range of enforcement options.

Like any regulatory regime, a strong enforcement capability is fundamental to the effectiveness of the EPBC Act achieving its objects. The range of enforcement mechanisms available include:

- civil and criminal penalties, including extensions of liability for contraventions of the EPBC Act:
  - corporate liability for the conduct of directors and officers<sup>72</sup>
  - executive officers' liability for contraventions by corporations,<sup>73</sup> and
  - landholders' liability for contraventions that occur on their land<sup>74</sup>
- administrative penalties such as infringement notices and suspending or cancelling permits<sup>75</sup>
- conservation orders and remediation orders and determinations to repair or mitigate environmental damage resulting from a contravention of the EPBC Act<sup>76</sup>
- injunctions<sup>77</sup>
- enforceable undertakings<sup>78</sup> to negotiate civil penalties and provide for future compliance, and
- environmental audits.

These enforcement options are supported by a suite of coercive powers provided under the Act. These include monitoring warrants, notices to produce and attend, and powers of search, seizure and arrest conferred on authorised officers under the Act.

### 6.2 DEWHA's approach to compliance and enforcement

DEWHA's approach to compliance and enforcement under the EPBC Act is outlined in its *Compliance and Enforcement Policy*.<sup>79</sup> The objectives of the Policy are that compliance and enforcement activities and arrangements under the EPBC Act:

- help achieve the objectives of the Act
- maximise compliance with the Act

---

<sup>72</sup> EPBC Act, Division 22 of Part 17.

<sup>73</sup> EPBC Act, Division 18 of Part 17.

<sup>74</sup> EPBC Act, Division 18A of Part 17.

<sup>75</sup> For infringement notices see Division 19 of Part 17 of the EPBC Act and Part 14 of the EPBC Regulations.

<sup>76</sup> Conservation orders, remediation orders and remediation determinations are dealt with in Divisions 13, 14A and 14B of the EPBC Act.

<sup>77</sup> EPBC Act, Division 14 of Part 17.

<sup>78</sup> EPBC Act, s.486DA and s.486DB.

<sup>79</sup> A copy of DEWHA's *Compliance and Enforcement Policy* can be obtained from the DEWHA website: <http://www.environment.gov.au/about/publications/compliancepolicy.html>.

- enhance community capacity to protect the environment and heritage and conserve biodiversity, and
- are generally accepted as appropriate by stakeholders and the community.

Under the Policy, DEWHA uses a number of flexible and targeted measures to promote self-regulation under the EPBC Act including education and awareness activities and the timely provision of advice and information about the Act.

If self-compliance mechanisms fail, the Policy provides for the use of the range of responsible enforcement sanctions under the EPBC Act. These available sanctions escalate as the severity of the breach increases and rely heavily on their deterrent effect, for example, penalty-based instruments such as suspension and cancellation of permits, remediation orders and determinations, pecuniary penalties, civil penalties and criminal prosecution action.

#### 6.2.1 ANAO Audit Report No.38 of 2002-03

In its Audit Report No.38 of 2002-03, *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999*, the ANAO made a number of recommendations for DEWHA to improve its compliance and enforcement regime under the EPBC Act. These recommendations included establishing appropriate mechanisms for enhanced communication and knowledge sharing, strengthening monitoring and review arrangements, and emphasising DEWHA's capacity to enforce the provisions of the EPBC Act.

#### 6.2.2 ANAO Audit Report No.31 of 2006-07

In its Audit Report No.31 of 2006-07, *The Conservation and Protection of National Threatened Species and Ecological Communities*, the ANAO followed up its 2002-03 findings and recommendations regarding compliance and enforcement activities under the EPBC Act and noted that DEWHA 'has a well designed compliance and enforcement strategy and since the last ANAO audit in 2002-03, has increased its capacity to undertake compliance and enforcement activities'. In this respect, the ANAO also noted the creation of an Environment Investigations Unit within DEWHA and referred to a successful civil prosecution undertaken by DEWHA.<sup>80</sup>

The ANAO also made a number of other recommendations within its 2006-07 Report about possible continued improvements for compliance and enforcement under the EPBC Act. DEWHA has 'in principle' accepted these recommendations and is preparing a formal response to the Report.

#### 6.2.3 Compliance and Enforcement Branch

In 2007-08 DEWHA allocated substantially more resources to compliance and in July 2007 established a dedicated Compliance and Enforcement Branch within the

---

<sup>80</sup> *Minister for the Environment & Heritage v Greentree (No 3)* [2004] FCA 1317.

Approvals and Wildlife Division of the Department. The Branch is responsible for addressing the full spectrum of compliance and enforcement related activities, from education through to prosecution, except in relation to terrestrial Commonwealth reserves. It currently comprises approximately 50 officers, who undertake monitoring, audit, compliance and investigations functions, with 23 of those officers authorised as inspectors under the EPBC Act.

#### 6.2.4 Compliance and enforcement – terrestrial Commonwealth reserves

The Parks Australia Division of the Department is responsible for compliance and enforcement in terrestrial Commonwealth reserves (including Kakadu and Uluru-Kata Tjuta National Parks). A number of staff from Parks Australia and other agencies are appointed as wardens and rangers under the EPBC Act. Currently there are 72 wardens and 39 rangers appointed for the terrestrial Commonwealth reserves. These wardens and rangers carry out on-ground compliance and enforcement activities.

#### 6.2.5 Compliance assurance projects

DEWHA is undertaking activities to monitor awareness of the EPBC Act and facilitate voluntary compliance with the Act. In 2004-05, DEWHA initiated a compliance assurance pilot project which involved comparing sample referrals to assess the level of compliance with Part 3 of the EPBC Act and gauge the effectiveness of the Department's monitoring, compliance and enforcement activities.

DEWHA is undertaking further compliance assurance projects including follow-up on the pilot project. DEWHA will compare results from the current project with those from the pilot project to determine if there are identifiable regional trends in the level of compliance and will use the results to improve and prioritise compliance activities under the EPBC Act.

#### 6.2.6 Marine compliance capacity building

A Marine Compliance Team was established in DEWHA in 2007 to improve marine incident management, surveillance planning and coordination.

#### 6.2.7 Raising awareness

DEWHA undertakes education and awareness-raising activities about the requirements of the EPBC Act. These activities include written and telephone communications, site visits, seminars, and workshops with local government authorities and relevant industry and interest groups.

#### 6.2.8 Working with Australian Government agencies

DEWHA works with other Australian Government agencies on compliance activities under the EPBC Act, in particular, DAFF, Customs and the Australian Fisheries



Management Authority (AFMA). For example, arrangements are in place between DEWHA and AFMA to improve information sharing and conduct joint prosecutions of foreign fishers and in 2008, Customs deployed a new vessel, the *Ashmore Guardian*, to provide a near constant presence at the Ashmore Reef National Nature Reserve.

Officers of certain agencies (e.g. Australian Federal Police and Customs) are *ex-officio* inspectors and wardens under the EPBC Act.<sup>81</sup> Arrangements are in place under the Act with some other agencies (e.g. AFMA) for the appointment of members of their staff as inspectors or wardens.<sup>82</sup>

DEWHA is also actively involved in a number of multi-agency forums for the strategic management of Australia's maritime domain, ranging from threat assessment through to on water responses.

#### 6.2.9 Australasian Environmental Law Enforcement and Regulators Network

DEWHA plays a key role in the Australasian Environmental Law Enforcement and Regulators Network, which is a network of environmental regulatory agencies that are responsible for the management of natural resources, cultural heritage and the protection of the environment. The Network has 31 agency members, including representatives from all State and Territory jurisdictions and the Australian Government. It aims to build relationships between jurisdictions to facilitate the sharing of information and to improve the regulatory compliance capacity of member agencies. It also seeks to develop national standards for training and best practice in environmental regulation. DEWHA is a major sponsor of the Network, funding secretariat support and participating in a number of the Network's subcommittees.

#### 6.2.10 Working with State and Territory governments

DEWHA is working closely with State and Territory environmental regulatory agencies on compliance with, and enforcement of, the EPBC Act. For example, State agencies undertake vessel patrols and other management activities on behalf of the Commonwealth in many Commonwealth Marine Reserves through annual funding agreements. Arrangements are in place with State and Territory governments for the appointment of staff as wardens under the Act.<sup>83</sup>

### **6.3 Monitoring and audit**

#### 6.3.1 Post approvals monitoring and audit

DEWHA has created a Monitoring and Audit Section to examine post approval activities to ensure compliance with approval conditions and particular manner components.

---

<sup>81</sup> EPBC Act, s.394 and s.397.

<sup>82</sup> See EPBC Act, s. 393(1) and (4) for arrangements for appointments.

<sup>83</sup> See EPBC Act, s.393(2) and (3) for arrangements.

Post approvals monitoring includes desktop monitoring of reporting requirements with random site inspections and desktop review to verify compliance.

In October 2006, DEWHA commenced implementation of a compliance auditing program.

Compliance audits are directed at ensuring that projects with the potential to impact on matters of NES are implemented in accordance with either the EPBC Act approval decision and any attached conditions, or the particular manner decision. The audits also help the Australian Government to understand how well approval conditions are being understood and applied.

To date, audits conducted under the audit program have focused on projects randomly selected from risk-assessed approval decisions.

DEWHA has also recently developed a strategic audit program. This program focuses on specific areas, such as industry sectors, geographical areas, threatened species and protected areas, such as Commonwealth marine parks.

### 6.3.2 Statistics on the compliance audit program

Since DEWHA commenced its random compliance audit program in 2006, 25 audits have been undertaken for particular manner and controlled action decisions. These audits have included the building of the National Portrait Gallery, several housing developments and an aquaculture facility. The audits were randomly selected from high and medium risk projects.

A summary of the results of each audit is published on DEWHA's public website.<sup>84</sup>

### 6.3.3 Directed environmental audits

Directed environmental audits are provided for under Division 12 of the EPBC Act.

Instances where directed environmental audits may be used are where the Minister suspects that an approved action is having impacts greater than anticipated when the action was assessed, or that the holder of an approval is likely to breach a condition of that approval. The Minister directs the holder of an approval to appoint an environmental auditor to carry out the audit as directed by the Minister. A directed environmental audit is not the same as an audit required as a condition of an approval, and it does not affect any of the obligations on the holder of the approval in that regard.

---

<sup>84</sup> A copy of the compliance audit summaries for 2006 and 2007 can be obtained from the DEWHA website: <http://www.environment.gov.au/epbc/publications/compliance-auditing-2006.html>; and <http://www.environment.gov.au/epbc/publications/compliance-auditing-2007.html>.

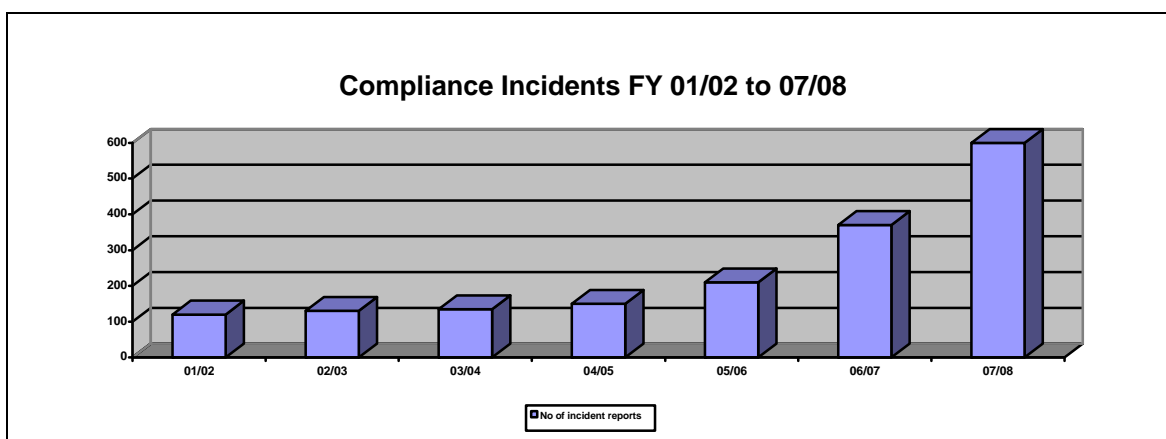
### 6.3.4 Statistics on directed environmental audits

The Minister announced the first directed environmental audit on 4 September 2008 in relation to the Reef Cove Resort at False Cape in Queensland.

## **6.4 Statistics on incidents and investigations**

### 6.4.1 Incident reports

In 2007-08 DEWHA dealt with significantly more incident reports than the previous financial year, receiving almost 1000 reports about 600 incidents or activities representing potential contraventions of Part 3 of the EPBC Act, compared to 580 reports about 370 incidents in 2006-07.



In 2007-08, 212 marine compliance reports were logged, documenting an estimated 177 incidents of non compliance. These were predominantly minor breaches in Commonwealth Marine Reserves and the vast majority (140) were recorded in Ashmore Reef National Nature Reserve. There were also a small number of EPBC Act listed species offences, predominantly associated with illegal foreign fishing. A new incident database has been established to better document sightings and incidents detected in the Commonwealth marine area and a 24 hour a day Duty Phone is maintained to enable immediate decisions in relation to maritime compliance incidents.

The Parks Australia Division of the Department maintains incident reports in respect of compliance and enforcement in terrestrial Commonwealth reserves. In 2007-2008 Parks Australia recorded 215 incidents about 2208 possible contraventions of the provisions of the EPBC Act and EPBC Regulations relating to reserves.<sup>85</sup>

### 6.4.2 Investigations

If preliminary investigations determine that an activity is potentially in breach of the EPBC Act, the matter is referred to the Environmental Investigations Unit of DEWHA.

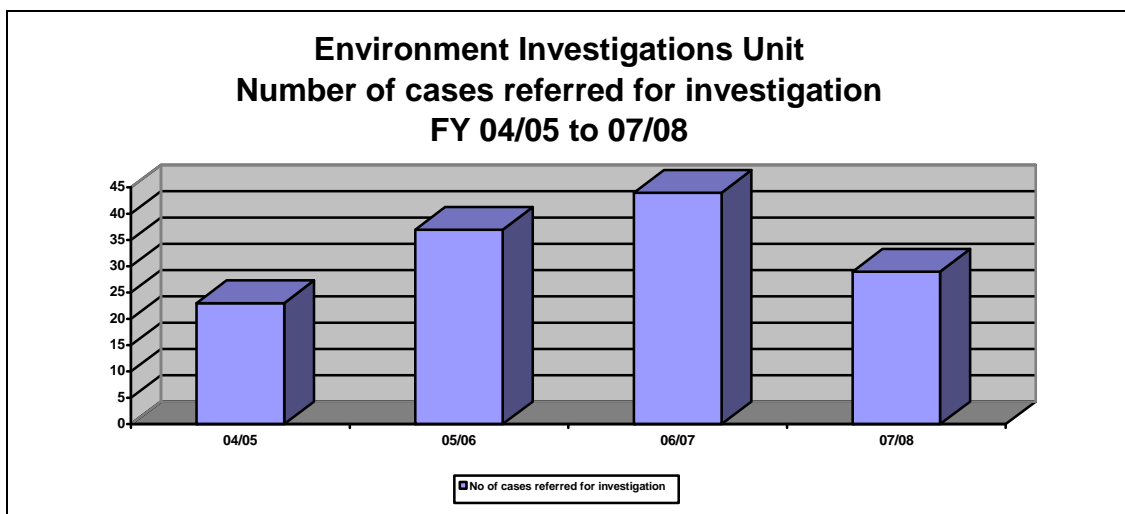
<sup>85</sup> Of the 2208 contraventions, almost 2000 were for non-payment of entry and use fees. These contraventions are aggregated for incident reporting purposes.

Possible offences against the EPBC Act occurring in terrestrial Commonwealth reserves are managed by the Parks Australia Division in DEWHA.

The Environment Investigations Unit was established during 2004. There are currently seven investigators in the unit, all of whom have formal qualifications and/or skills and experience in law enforcement and compliance. Where appropriate, investigations are undertaken in conjunction with the Australian Federal Police (AFP) and Customs.

In 2007-2008, the Environment Investigations Unit initiated 19 new investigations. Since 2004, 133 cases have been referred to the Unit for investigation.

Many investigations undertaken by the Environment Investigations Unit have been complex and protracted.



If matters under investigation by DEWHA are deemed to warrant criminal charges, they are referred to the Commonwealth Director of Public Prosecutions (CDPP).

For civil penalty actions under the EPBC Act, DEWHA instructs its legal services provider, currently the Australian Government Solicitor (AGS), to conduct those actions on behalf of the Department.

Other investigations may support administrative outcomes such as remediation determinations or enforceable undertakings.

DEWHA also has a separate marine investigations team located in the Compliance Support Unit. This team investigates breaches of marine provisions under the EPBC Act and, since its inception in April 2006, has investigated nine breaches of marine provisions under the Act.

### 6.4.3 Coordination with investigations under other legislation administered by DEWHA

DEWHA has also established within its Compliance Support Unit a team of investigators responsible for enforcement of other legislation administered by the Department. As some actions breach both the EPBC Act and other legislation administered by the Department, the Compliance Support Unit facilitates appropriate co-ordination of compliance and enforcement activity.

## **6.5 Examples of enforcement action**

### 6.5.1 Completed prosecution and civil penalty matters

Examples of enforcement actions that have been taken under the EPBC Act are:

- civil penalty action against a NSW landholder for illegally clearing and ploughing a portion of the Gwydir Wetland, which is a wetland of international importance under the EPBC Act. A civil penalty of \$450,000 was imposed<sup>86</sup>
- in 2007, the Federal Court ordered the skipper of an Australian commercial fishing vessel to pay a civil penalty and costs totalling \$52,500 for illegally fishing within the Mermaid Reef Marine National Reserve, off the Western Australian coast, and
- in 2006 the Department successfully prosecuted an individual for possession of regulated wildlife and a fine of \$2,000 was imposed.

### 6.5.2 Current prosecution and civil penalty matters

DEWHA currently has seven investigations that have been referred to the CDDP, and five investigations referred to AGS, for consideration with a view to commencing legal proceedings under the offence or civil penalty provisions of the EPBC Act.

### 6.5.3 Seizures and forfeiture under the EPBC Act

Since 2004, DEWHA has seized 442 illegally imported exotic parrots from 11 individuals. One case resulted in the forfeiture of 28 parrots when the owner discontinued their legal appeal against the seizure. A separate appeal against the seizure of 243 parrots is expected to be finalised by mid 2009.

### 6.5.4 Administrative enforcement action

Where the Department considers that it is possible to achieve a superior outcome for the environment through administrative action, the Department often seeks to establish agreement with a person that may have breached the EPBC Act to undertake appropriate actions to benefit the environment. Such decisions are made in accordance with the Department's published *Compliance and Enforcement Policy*.

---

<sup>86</sup> *Minister for the Environment & Heritage v Greentree (No 3)* [2004] FCA 1317.

Since 2000, DEWHA has entered into 12 conservation agreements to protect listed threatened species and communities, World or National Heritage values or to rehabilitate damage to the habitat of a protected species. Four of these agreements were the result of compliance action.

On 4 September 2008 the Minister for the first time suspended an approval under the EPBC Act. The suspension resulted from concerns about the threat of sediment run-off from the Reef Cove Resort project at False Cape in Queensland impacting on the Great Barrier Reef World Heritage Area. The suspension means that the developer must undertake remediation work at the site before construction can continue. The Minister also directed an environmental audit of the project be undertaken to examine compliance with approval conditions.

#### 6.5.5 Remediation orders and determinations and enforceable undertakings

Amendments to the EPBC Act which came into effect in February 2007 introduced a range of new enforcement measures including:

- remediation orders – an order for remediation issued by the Federal Court
- remediation determinations – a determination for remediation issued by the Minister, and
- enforceable undertakings – a written undertaking provided by a person to the Minister that the person will pay a certain monetary amount to another specified party for the purpose of protection and conservation of a protected matter under the EPBC Act.

The first remediation determination was issued by the Minister in February 2008 in relation to the clearing of up to 17 hectares of native vegetation at Clarke's Cove near Airlie Beach in Queensland. The remediation determination required the responsible parties to stabilise and revegetate the site, and to pay a \$250,000 bond.

The first enforceable undertaking was accepted by the Minister on 25 August 2008. The enforceable undertaking requires a landholder at Cressy (near Geelong in Victoria) to pay \$20,000 as reparations for the clearing of habitat for the listed vulnerable Striped Legless Lizard. The money will be paid to the Victorian Department of Sustainability and the Environment for use in conservation and research projects aimed at protecting the lizard.

#### 6.5.6 Enforcement in Commonwealth reserves

The following court enforcement actions have been taken under the EPBC Act and the EPBC Regulations concerning Commonwealth-reserves, including marine areas, or otherwise involving the Parks Division in DEWHA:

- Marine (civil) – three actions
- Marine criminal – four actions
- Terrestrial (PAD) – 28 actions and one currently on foot, and
- Part 13 – two actions concerning the Cocos (Keeling) Islands.

Of the three marine civil matters, one (as noted above) related to illegal fishing within the Mermaid Reef Marine National Reserve and resulted in the imposition of a civil penalty plus costs of \$52,500. The other two marine civil matters related to illegal fishing in the Great Australian Bight Marine Park (Commonwealth Waters) and resulted in the imposition of civil penalties and costs of \$12,500 and \$32,000.

## **6.6 Community involvement**

DEWHA encourages the community to notify the Compliance and Enforcement Branch of suspected contraventions of the EPBC Act.

## **6.7 Other legal action**

### 6.7.1 Injunctions

The EPBC Act allows an 'interested person' to apply directly to the Federal Court for an injunction to stop a party from undertaking or continuing an activity that contravenes the EPBC Act or Regulations.

The EPBC Act defines an 'interested person' as an individual or organisation that, at any time in the two years immediately before the suspected contravention, has engaged in a series of activities for protection or conservation of, or research into, the environment. In the case of an organisation, the objects of the organisation must include the protection or conservation of, or research into, the environment.

There have been eight occasions when third parties have applied to the Federal Court for an injunction under the EPBC Act. For example, the Humane Society International applied to the Court for a declaration that Japanese whaling company Kyodo Senpaku Kaisha had breached the EPBC Act by taking whales in the Australian Whale Sanctuary and an injunction restraining the company from doing so in the future. The Society qualified as an 'interested person' under the EPBC Act and on 15 January 2008 the Court granted the declaration and injunction.

### 6.7.2 Judicial review

Judicial review is available for administrative decisions made under the EPBC Act. Judicial review actions challenge the decision-making processes used by a decision-maker to arrive at a decision. They are not a review of the merits of a particular decision.

The EPBC Act confers extended standing for persons to bring applications for judicial review. This standing mirrors that provided for injunctions to extend the meaning of 'aggrieved person' under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to include an Australian individual or organisation that, at any time in the two years immediately before the decision, has engaged in a series of activities for protection or conservation of, or research into, the environment. In the case of an

organisation, the objects of the organisation must include the protection or conservation of, or research into, the environment.

Judicial review challenges can be brought under the ADJR Act or the common law.

### 6.7.3 Statistics on judicial review applications

Since the commencement of the EPBC Act there have been 21 applications for judicial review of decisions made under the EPBC Act (not including cases on appeal), 10 of which were filed and/or heard in the 2007-08 financial year.

In the majority of these cases, the decision-making process employed under the EPBC Act has been upheld.

### 6.7.4 Merits review

Merits review is also available for specified decisions made under the EPBC Act.

The EPBC Act allows applications for merits review of decisions relating to:

- permits for activities affecting listed threatened species or ecological communities, listed migratory species, listed marine species and cetaceans under Part 13<sup>87</sup>
- permits under Part 13A (section 303GJ),<sup>88</sup> and
- advice on whether an action would contravene a conservation order under Part 17.<sup>89</sup>

An action seeking merits review of these decisions can be brought in the Administrative Appeals Tribunal (AAT) where the decision was made by a delegate of the Minister. That is, merits review to the AAT is not available for decisions made personally by the Minister.

### 6.7.5 Statistics on merits review applications

Since the commencement of the EPBC Act there have been 12 applications for merits review of decisions made under the Act.

---

<sup>87</sup> EPBC Act, s.206A, s.221A, s.243A and s.263A.

<sup>88</sup> EPBC Act, s.303GJ.

<sup>89</sup> EPBC Act, s473.



## PART 2

### NATURAL RESOURCE PROTECTION PROGRAMS ADMINISTERED BY DEWHA

This Part of the submission provides information about natural resource protection programs administered by DEWHA which are relevant to a discussion about efforts to protect the environment and conserve biodiversity. It specifically provides information about the programs administered by DEWHA that are referred to in the Terms of Reference for this Inquiry.

## 7. NATURAL RESOURCE PROTECTION PROGRAMS

---

DEWHA supports a range of approaches for conserving Australia's biodiversity. In addition to the regulatory responses provided by the EPBC Act and EPBC Regulations, DEWHA also administers a number of program responses to achieve biodiversity conservation.

A discussion of the programs administered by DEWHA identified by the Senate Committee in paragraph 2(f) of the Terms of Reference – Caring for our Country, Envirofund, Environmental Stewardship Program, and Landcare - is provided below.

For the purposes of assisting the Senate Committee with its inquiry, this Part of the submission also discusses other natural resources management programs administered by DEWHA that are relevant to the conservation of biodiversity, such as the Commonwealth Environment Research Facilities program and the use of market-based instruments and conservation covenants.

### 7.1 Caring for our Country

Caring for our Country is the Australian Government's new natural resource management initiative that brings together the delivery of the Natural Heritage Trust (NHT), National Landcare Program (NLP), Environmental Stewardship Program (ESP) and the Working on Country Indigenous land and environmental program. This program is jointly administered by DEWHA and DAFF.

Caring for our Country is designed as an integrated package with one clear goal, a business approach to investment, clearly articulated outcomes and priorities and improved accountability. It will be an ongoing program.

In the first five years (1 July 2008 - 30 June 2013), the Australian Government has committed \$2.25 billion to the program. This is almost \$450 million per annum.

The goal of Caring for our Country is: "[a]n environment that is healthy, better-protected, well-managed, resilient, and provides essential ecosystem services in a changing climate". To achieve this objective, Caring for our Country will focus on achieving strategic results in six national priority areas:

- the national reserve system - to accelerate the establishment of a comprehensive, adequate and representative reserve system
- biodiversity and natural icons - for example, protecting world heritage areas, the Great Barrier Reef rescue, weed and feral animal control and improving outcomes for nationally threatened species and communities
- coastal environments and critical aquatic habitats - for example protection and rehabilitation of dunes and improving the water quality discharged into coastal environments

- sustainable farm practices - building on the success of Landcare to change on-farm land management practices to improve the delivery of ecosystem services and production and assist farmers and primary industries to reduce their contributions to greenhouse gas emissions
- natural resource management in remote and northern Australia - securing environmental and natural resource outcomes in these places, particularly for Indigenous groups, and
- community skills, knowledge and engagement - enhancing the skills and knowledge of Indigenous Australians, volunteers and communities to enable them to form more effective partnerships to deliver landscape-scale change.

Through an annual business plan describing investment priorities and targets, Caring for our Country will provide an opportunity for non-government organisations, regional bodies, local, state, territory and Australian government agencies to access funds to help achieve our national priorities. Caring for our Country will also include a range of small grants targeting specific national priorities specifically for community groups and landholders.

## **7.2 Environmental Stewardship Program**

The Caring for our Country Environmental Stewardship Program is focused on the long-term protection, rehabilitation, and improvement of targeted high public value environmental assets located on private land or impacted by activities conducted on private land.

The Australian Government has allocated \$42.5 million to Environmental Stewardship Program over four years from 2007-08 to 2010-11.

The objective of the Environmental Stewardship Program is to maintain and improve the quality and extent of these assets which are targeted from the following matters of NES under the EPBC Act:

- nationally endangered or vulnerable species and ecological communities
- migratory species
- wetlands for which Australia has international responsibilities, and
- natural values associated with World Heritage properties and National Heritage places.

By employing a range of market based approaches where appropriate the Environmental Stewardship Program will engage private land managers in long-term (up to 15 years) contracts. Land managers will provide management services beyond any existing regulatory requirements.

Depending on the assets targeted, the Environmental Stewardship Program seeks to achieve a range of outcomes including:

- improved habitat across the landscape
- increased viability, integrity and buffers to high quality remnants for species, ecological communities, Ramsar wetlands and World Heritage properties
- improvements to the long-term protection of nationally endangered species and ecological communities
- improvement in the condition and function of ecological communities, and
- enduring changes in land manager attitudes and behaviours towards environmental protection and sustainable land management practices.

The first environmental asset to be targeted is the critically endangered Box Gum Grassy Woodland ecological community.

Outcomes achieved will address the biodiversity and national icons priority area under the Caring for our Country initiative. Depending on what other matters of NES are targeted, the Environmental Stewardship Program may also directly address other priority areas including: coastal environments and critical aquatic habitats, and natural resource management in remote and northern Australia; and indirectly address priority areas including: sustainable farm practices, and community skills, knowledge and engagement.

In targeting Box Gum Grassy Woodlands, the Program is delivering two projects in 2008-2009:

1. The Box Gum Grassy Woodland Lachlan Murrumbidgee Project which targets Box Gum Grassy Woodland patches greater than five hectares within the Lachlan and Murrumbidgee Catchment Management Authority regions of NSW (excluding the ACT).
2. The Box Gum Grassy Woodland Large High Quality Sites Project which targets larger high quality Box Gum Grassy Woodland patches (greater than 50 fifty hectares) across six regions in NSW (Border Rivers-Gwydir, Namoi, and Central West) and QLD (South East QLD, Condamine, and Border Rivers-Balonne).

### **7.3 Landcare**

Since the early 1990s, the Australian Government has funded landcare projects focused on improving the management of soils, water and vegetation at a farm and community level. It is estimated that around three-quarters of Australian farmers are either involved in landcare activities or benefit from knowledge acquired through the landcare movement.

Landcare continues to be an important component of the Caring for our Country initiative.

The Landcare component of Caring for our Country, which is administered by DAFF, will support the landcare movement with a particular focus on adapting agricultural practices to the effects of Australia's changing climate. It specifically will encourage landholders, through production focused outcomes, to undertake innovation approaches to landcare and related sustainable outcomes on farm. The resulting collective community action improves resilience and productivity while sustainably managing the environment and natural resources.

In the 2008-09 budget, DAFF was provided with \$190.5 million over five years to administer the National Landcare Program component of Caring for our Country. DEWHA anticipates that further information about the Landcare program will be provided in a separate submission to the Inquiry, provided by DAFF.

#### **7.4 Envirofund**

The Australian Government Envirofund was the local funding stream of the NHT, which commenced in 2002 and concluded on 30 June 2008 following the integration of the NHT into the Caring for our Country program.

The Envirofund provided funding for small projects aimed at conserving biodiversity and promoting sustainable resource use. Through this funding, the Envirofund provided the opportunity and means for individuals and groups to undertake on-ground actions to tackle important local problems through a competitive grants program. These grants provided up to \$50,000 to community groups and individuals to carry out on-ground natural resource management projects and capacity-building activities.

The ten rounds of the Australian Government Envirofund grants provided \$135million to 8,143 projects.

#### **7.5 Commonwealth Environment Research Facilities program**

The \$100 million Commonwealth Environment Research Facilities (CERF) program funds research that supports public policy or management objectives and builds critical mass in areas of Australia's research strengths and the Australian Government's national research priorities. Research is to be world-class, engage with end users and must include communication strategies which include all relevant stakeholders. Under the CERF program all results must be made freely and be made available for public use.

The CERF program promotes research that is multidisciplinary, multi-institutional, collaborative and has partner co-investment.

The CERF program has now funded eight large multi-disciplinary, multi-institutional world-class research hubs; ten significant projects; and five world-class fellowships.

Research undertaken by the eight CERF research hubs includes:

- *Marine and Tropical Sciences Research (MTSRF)* (\$40 000) – This consists of research administered by the Reef and Rainforest Research Centre (RRRC) in Cairns. The MTSRF research vision is that North Queensland's public environmental assets – particularly the Great Barrier Reef and its catchments, tropical rainforests including the Wet Tropics World Heritage Area, and Torres Strait – maintain or build their health through the generation, transfer and sharing of world-class research and knowledge. It includes nearly 50 specifically targeted environmental research projects in the area.
- *Facility Applied Environmental Decision Analysis (AEDA)* (\$7.6 million) – the key themes of this research and analysis are prioritisation and spatial planning, environmental decisions-making and optimal monitoring. The Principal researcher is Professor Hugh Possingham from the University of Queensland.
- *Tropical Rivers and Coastal Knowledge (TRaCK)* (\$8.8 million) – the key theme of this research is the Top End's tropical rivers and coasts and the environmental challenges that this region faces with its increasing development pressure on water resources, catchments and coastal environments, as well as with existing threats such as weeds and feral animals. An important focus is working with Indigenous communities on environmental issues. The Principal researcher is Dr Michael Douglas from Land and Water Australia.
- *Landscape Logic* (\$8.8 million) – the key theme of this research is helping natural resource managers improve decision making about investment in environmental management by examining links between actions at local site scale and resource condition change at landscape scale. It is focussing on two catchments in Victoria and two in Tasmania. The Principal researcher is Professor Ted Lefroy from the University of Tasmania.
- *Australian Marine Mammal Centre* (\$2.5 million) – this is Australia's first major national research centre focused on protecting and conserving whales and dolphins. The Principal researcher is Dr Nick Gales from DEWHA's Australian Antarctic Division.
- *Prediction and Management of Australia's Marine Biodiversity* (\$6.6 million) – this research hub aims to improve the capability of marine science by improving our knowledge of marine diversity and how we manage that biodiversity. The key theme is developing tools to help identify, assess and conserve Australia's marine assets and use them in a sustainable way. The Principal researcher is Dr Nicholas J. Bax from the University of Tasmania.
- *Taxonomy Research & Information Network (TRIN)* (\$6.0 million) – this hub aims to be a global leader in delivering web-based information on taxonomy, and moving towards the creation of a 'one stop shop' for assessing key information on Australia's biodiversity. The Principal researcher is Dr Judy West from CSIRO.
- *Environmental Economics* (\$7.0 million) – this hub brings together leading economic and social scientists to look at new and improved ways of valuing environmental assets and determining the benefits and costs of different

actions. The Principal researcher is Professor Jeff Bennett from the Australian National University.

CERF researchers are also directly working in a number of key areas, including:

- Caring for our Country
- Climate change and emissions trading
- Environmental economics
- National Reserve System
- Northern Australia Water Futures Assessment, and
- World Heritage Areas.

## 7.6 Conservation Covenants and Market-Based Instruments

There are various approaches to engaging with private landowners to protect and conserve biodiversity on private land. These can include financial or non-financial incentives and market based approaches designed to target different types of landholders and suit their specific motivations. Incentives range from providing information, advice and support to landholders through to purchasing specific actions and can be linked to conservation covenants or management plans.

A conservation covenant is a voluntary agreement between a landowner and an authorised body to help the landowner protect and manage the environment on their property. Covenants are registered on the title of the land and can apply to all or part of a property. Although there are exceptions, it is usually permanent.

Conservation covenants are designed to protect the natural values of an area such as its native vegetation, wetlands, wildlife and related habitat, and areas of cultural significance. They can also include areas that have been rehabilitated. The terms of the covenant agreement are negotiated between the landowner and the covenant provider and may only be changed with the agreement of both parties.

There are numerous conservation covenanting programs operating across Australia, and they vary in design based on the jurisdiction in which they are signed, and on the legislation under which they are established.

There are currently 11 conservation covenanting programs approved by the Australian Government for the purposes of the *Income Tax Assessment Act 1997*. To date, DEWHA understands that these covenanting programs have established about 4,215 covenants protecting over 3,200,000 hectares of private land.

Market-based approaches to deliver incentives are also emerging as a cost effective approach to engage farmers and other land managers in long term conservation management. DEWHA has integrated some of these various approaches in recent programs to deliver incentives for biodiversity conservation. For example, as part of the Tasmanian Regional Forest Agreement, DEWHA have secured over 50,000 hectares

of high priority forest on private land using competitive tenders combined with covenants. Over 350 landowners have been involved, who have received funding support to protect parts of their properties through covenants.

The recent Forest Conservation Fund in Tasmania and the Maintaining Australia's Biodiversity Hotspots program used tender processes to encourage land owners to bid in a competitive process, and delivered funding for conservation covenants on a value for money basis.

## **7.7 Maintaining Australia's Biodiversity Hotspots Program**

Biodiversity hotspots are areas that support largely intact natural ecosystems where native species and communities are well represented and there is a high diversity of species which are not found or are rarely found outside the hotspot.

In 2003, the TSSC, comprising Australia's leading scientific experts in this field, identified 15 hotspots across Australia.

The Australian Government committed \$36 million over 2004-2008 under the Maintaining Australia's Biodiversity Hotspots Program to promote active conservation management and protect these and other hotspots. The Biodiversity Hotspots program supported two activities in these areas:

- stewardship payments to private landholders to help them protect existing natural habitats with high conservation values on their land, and
- payments to non-government conservation organisations for the acquisition of high biodiversity value land, to be managed for conservation.

Expenditure under the Biodiversity Hotspots program included the following:

- \$4.5 million for the acquisition of Brooklyn Holding in Queensland – this 60,000 hectare property in Queensland's wet tropics contains some of Australia's richest and most diverse wildlife
- \$1.5 million for the Eastern Mount Lofty Ranges 'Bush Bids' stewardship initiative in South Australia to support conservation activities by land holders to protect grassland and remnant vegetation communities
- \$6 million for the Daintree Conservation Initiative – this is a complementary initiative to fund the buyback of land in the Daintree (\$5 million) and support the recovery and conservation of the nationally endangered Cassowary (\$1 million)
- \$4.5 million for seven stewardship projects in Tasmania, New South Wales, Queensland, South Australia and the Northern Territory. These projects have engaged 90 landholders to protect over 180,000 hectares of high conservation value habitat, and



- \$9 million for the acquisition of six properties containing outstanding biodiversity values, with a total area of about 1.2 million hectares comprised of:
  - Yourka Station in Northern Queensland (43,500 hectares)
  - Edgbaston Station in Northern Queensland (8,074 hectares)
  - Kalamurina in South Australia (667,000 hectares)
  - Pungalina Station in the Northern Territory (194,800 hectares)
  - Marion Downs in Western Australia (289,700 hectares), and
  - Vale of Belvoir in Tasmania (474 hectares).

## 7.8 Initiatives outside the EPBC Act for gathering information about biodiversity

In addition to the mandatory information gathering and inventory and list preparation roles under the EPBC Act, there are also other initiatives undertaken or supported by DEWHA which are aimed at improving the quality and accessibility of information about Australia's biodiversity.

Some current initiatives are:

- the *Australian Biological Resources Study* – taxonomic research about Australia's biodiversity
- the *Centre for Plant Biodiversity Research* – which is a partnership between the Director of National Parks and CSIRO to document the biological diversity of the Australian environment, in particular through the Australian National Herbarium which houses a collection of 1.3 million plant specimens
- Australia's Virtual Herbarium – which is a collaborative project of the State, Commonwealth and Territory herbaria to provide an on-line public botanical information resource that provides access to data associated with six million scientific plant specimens held by the herbaria
- the *Atlas of Living Australia* – which is a five-year project funded under the Australian Government's National Collaborative Research Infrastructure Strategy. Its mission is to develop a biodiversity data management system which will link Australia's biological knowledge with its scientific and agricultural reference collections and other custodians of biological information, and
- the *Terrestrial Ecosystem Research Network* – a \$20 million investment that will provide infrastructure that builds on the significant past and present investments of State, Territory and Australian governments to facilitate the development of an integrated approach to understanding Australia's ecosystems.

## 7.9 The National Reserve System

The National Reserve System, which currently includes more than 9,000 protected areas, is not an identified category of 'protected area' under the EPBC Act. It is however an activity administered by DEWHA that is important in managing Australia's biodiversity.

The National Reserve System is made up of Commonwealth reserves declared under the EPBC Act, state and territory national parks and other reserves, Indigenous lands and private land managed for conservation purposes. It covers over 89 million hectares, which is more than 11 per cent of the Australian continent.

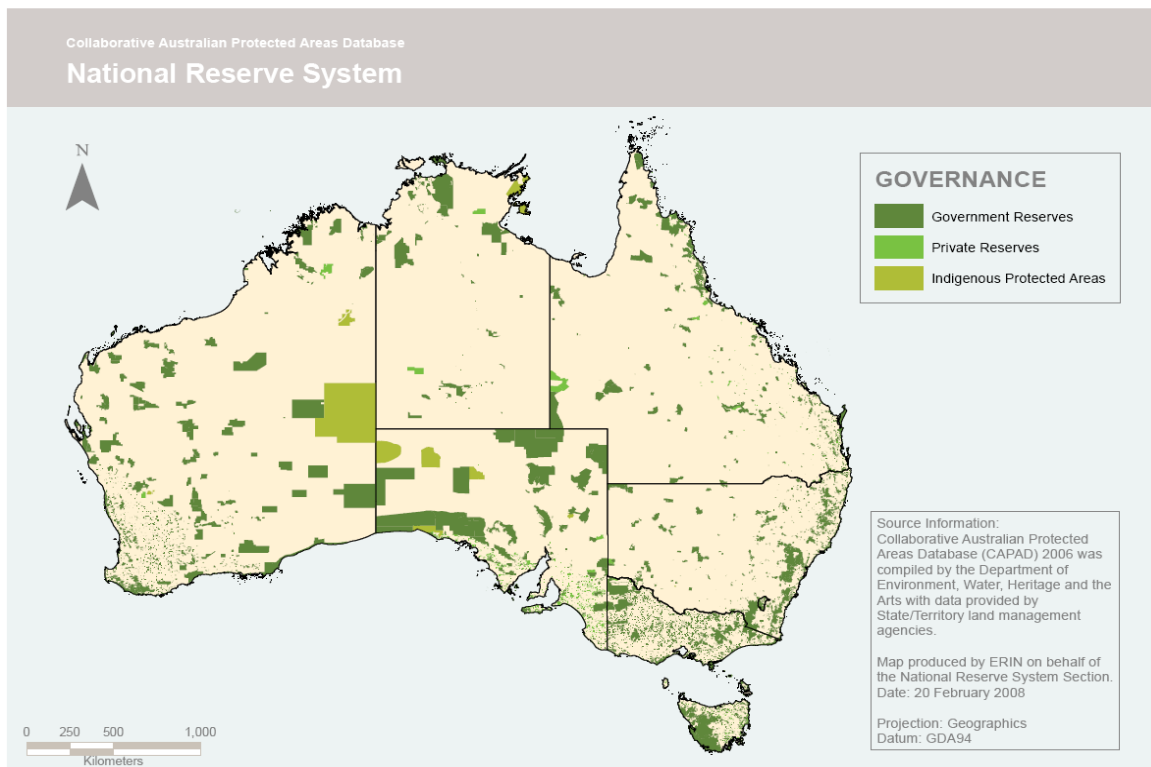
The National Reserve System also includes six terrestrial reserves established under the EPBC Act, namely:

- Kakadu
- Uluru-Kata Tjuta
- Booderee
- Norfolk Island
- Christmas Island, and
- The Pulu Keeling National Parks.

Continuing to build the National Reserve System is also one of six priorities under the Caring for our Country program (the Caring for Our Country program was discussed earlier in this Part of the submission).

A diagrammatic representation of the National Reserve System is provided below.

### National Reserve System – August 2008



## 7.10 Indigenous Protected Areas

Indigenous Protected Areas (IPAs) are indigenous owned or controlled lands which have been declared as protected areas in perpetuity by their traditional owners and are managed according to the IUCN protected area guidelines as part of Australia's national reserve system.

IPAs are not Commonwealth areas and not established under the EPBC Act, and are therefore not managed under the EPBC Act. However many IPAs give effect to the management of EPBC listed species, National Heritage sites and areas with rich biodiversity.

The IPA program was initiated in 1995 with the aim of establishing a mechanism for conservation partnerships with Indigenous land owners to achieve a comprehensive, adequate and representative national reserve system. Under the program, traditional owners are supported to conduct extensive consultations and develop plans of management for the declaration of their lands as IPAs. The Indigenous landowners are then supported to implement their plans including managing threats such as weeds, feral animals and wildfire and to manage and protect their land's natural and cultural values.

The program was independently reviewed in 2006 and found to be extremely cost effective in meeting its aims.<sup>90</sup>

There are currently 25 IPAs covering an area of over 20 million hectares. The most recently declared IPA is Kaanju Ngaachi Wenlock and Pascoe Rivers IPA in far north Queensland (declared on 4 June 2008).

IPA projects are also being developed in a further 34 areas across Australia.

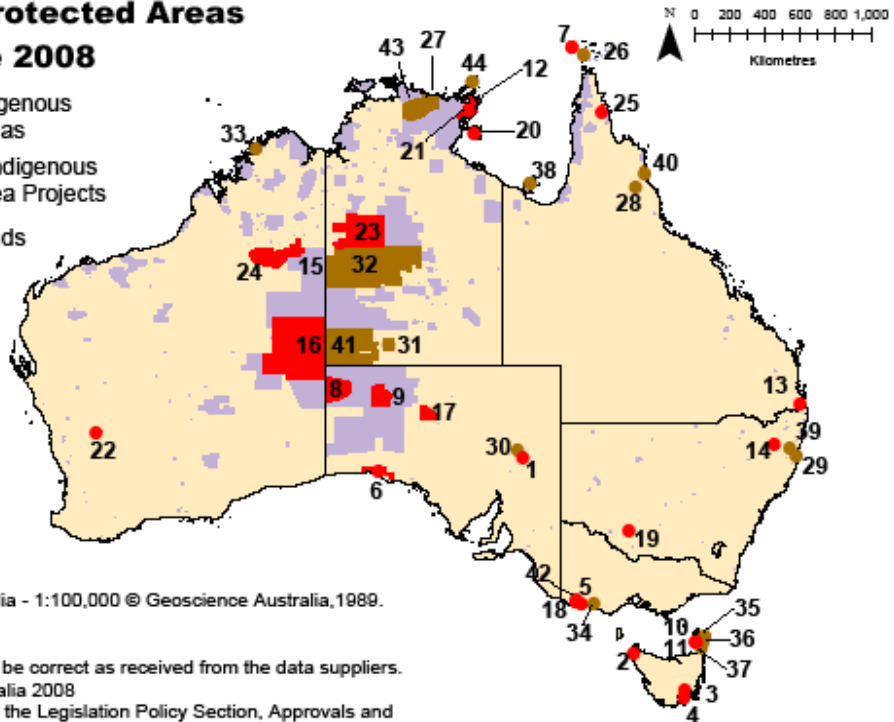
The diagram which follows shows the location of declared IPAs, IPA consultation and IPA funded co-management projects.

---

<sup>90</sup> Brian Gilligan, *The Indigenous Protected Areas program - 2006 Evaluation* (2006): <http://www.environment.gov.au/indigenous/publications/ipa-evaluation.html>.

## Indigenous Protected Areas June 2008

- Declared Indigenous Protected Areas
- Developing Indigenous Protected Area Projects
- Aboriginal lands



Data source:  
Topographic Data - Australia - 1:100,000 © Geoscience Australia, 1989.  
All rights reserved.  
Caveats:  
Data used are assumed to be correct as received from the data suppliers.  
© Commonwealth of Australia 2008  
Map produced by ERIN for the Legislation Policy Section, Approvals and  
Wildlife Division, Australian Government Department of the Environment,  
Water, Heritage and the Arts, Canberra, July 2008.

### LEGEND:

1 Nantawarrina	12 Dhimurru	24 Warlu Jilajaa	34 Framlingham
2 Preminghana	13 Guanaba	Jumu (Great	Forest
3 Risdon Cove	14 Wattleridge	Sandy Desert)	35 Babel Island
4 Putalina	15 Paruku (Lake	25 Kaanju (Chuula)	36 Big Dog Island
(Oyster Cove)	Gregory)	26 Pulu Islet	37 Clarke Island
5 Deen Maar	16 Ngaanyatjarra	27 Djelk	38 Wellesley Islands
6 Yalata	17 Mount Willoughby	28 Ngarrabullgan	39 Dorodong
7 Warul Kawa	18 Tyrendarra	29 Gumma	40 Eastern Yalanji
8 Watarru	19 Toogimbie	(Forresters Beach)	41 Katiti/Petermann
9 Walalkara	20 Anindilyakwa	30 Mount Serle	Ranges
10 Mount Chappell	21 Laynhapuy	31 Angas Downs	42 Kurtonitj
Island	22 Ninghan	32 Southern Tanami	43 Warddeken
11 Badger Island	23 Northern Tanami	33 Saltwater Country	44 Wessel Islands

## CONCLUSION

---

DEWHA is willing to provide the Committee with further information and assistance for the purposes of its Inquiry into the Operation of the EPBC Act.

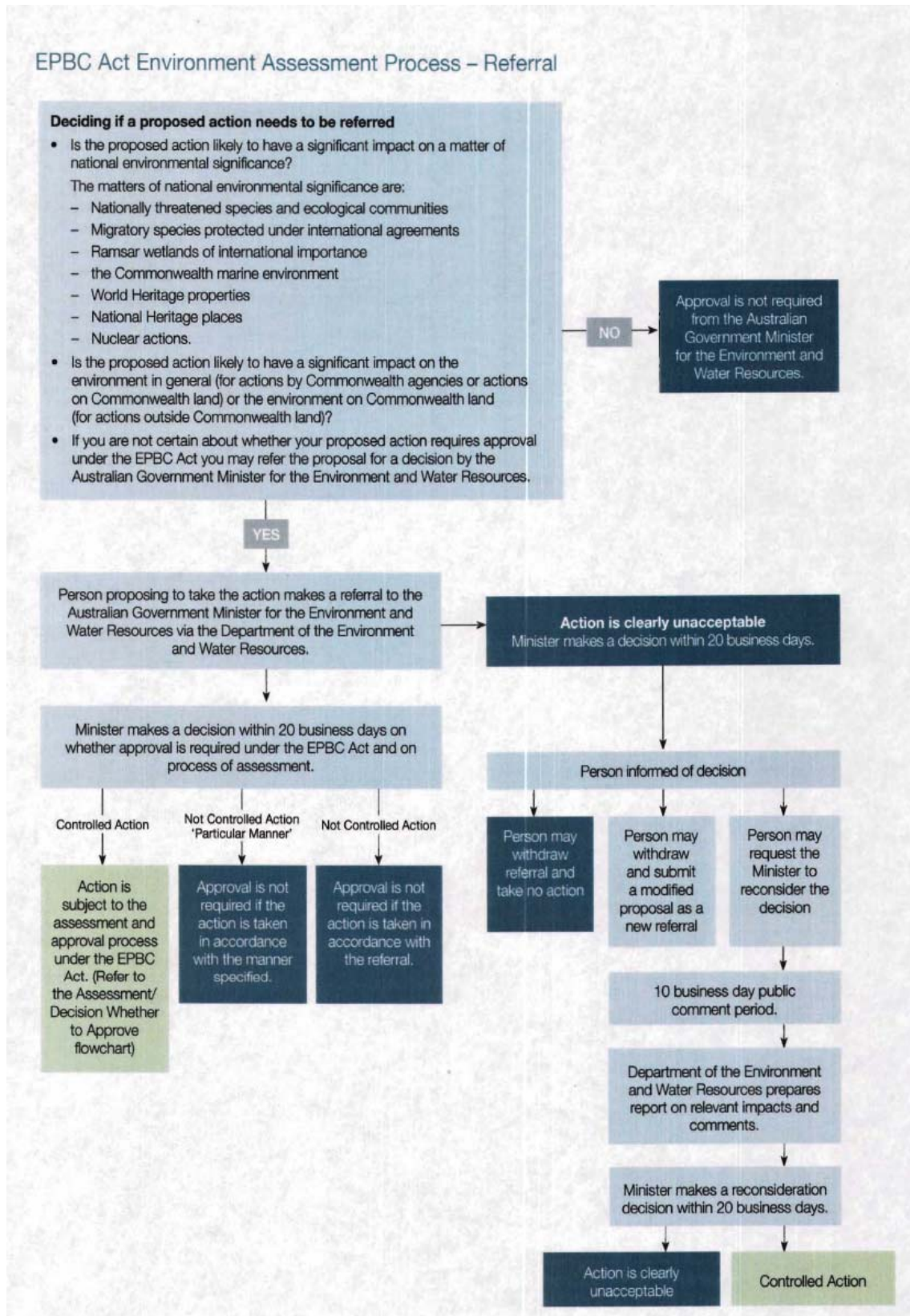
DEWHA notes that under section 522A of the EPBC Act, the Minister for the Environment, Heritage and the Arts is required to cause the EPBC Act to be independently reviewed within its first 10 years of operation.

Under section 522A of the EPBC Act, the independent review will be required to examine the operation of the EPBC Act and the extent to which the objects of the Act have been achieved since its commencement. The independent review will also provide a timely and appropriate forum to examine the responsiveness of the EPBC Act in meeting climate change adaptation needs for the biodiversity sector. A date for commencement of the independent review has not yet been announced.

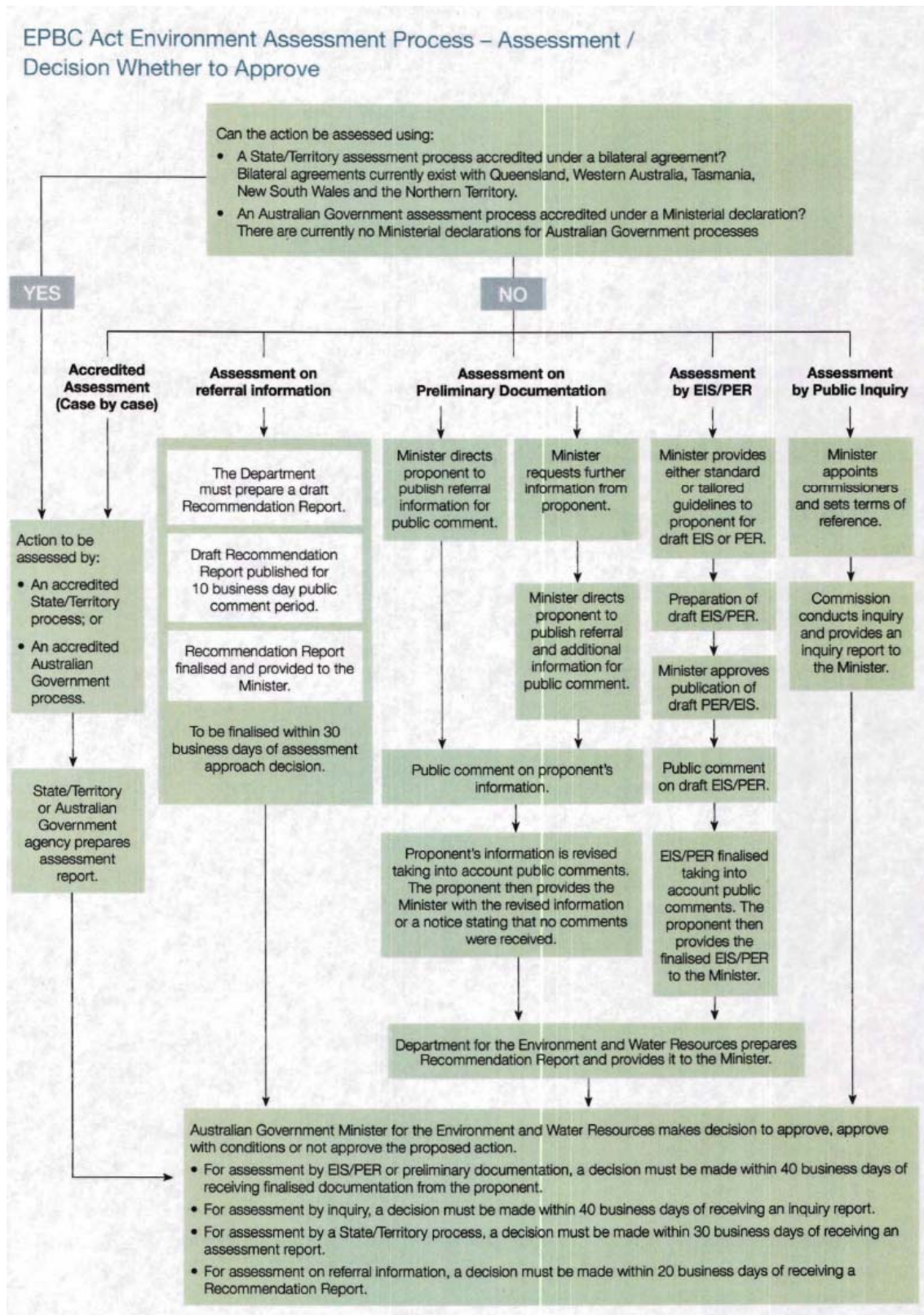
### **COAG**

DEWHA is also contributing to the COAG Business Regulation and Competition Working Group work on environmental impact assessment and approval, which includes an examination of the role for strategic approaches to management and protection of the environment.

Flowchart on the EPBC Act Referral Process



## Flowchart on the EPBC Act Environment Assessment Process Decision whether to approve an action



**Flowchart of the listing process for threatened species, ecological communities and key threatening processes nominations**

