Australian Government

Department of Sustainability, Environment, Water, Population and Communities

AUSTRALIAN GOVERNMENT RESPONSE

TO THE REPORT OF THE INDEPENDENT REVIEW OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999*

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PREAMBLE

The Australian Government welcomes the opportunity to respond to the inquiry of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) done by Dr Allan Hawke AC (the Review). In doing this review, Dr Hawke was supported by a panel of experts—the Honourable Paul Stein AM, Professor Mark Burgman, Professor Tim Bonyhady and Rosemary Warnock. The Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Report) was tabled in the Australian Parliament on 21 December 2009.

The government acknowledges the comprehensive consultation, analysis and strategic thinking done by Dr Hawke and his panel in delivering the Report. The Report deals comprehensively with two major aims of the government: first, to achieve better environmental outcomes, and secondly, to substantially deregulate and improve the efficiency of Australia's management of environmental issues.

Improving environmental outcomes is part of ensuring a sustainable future for Australia, one that protects our quality of life. The wellbeing of our communities is dependent on the health of our natural environments and the ecosystem services they provide, including the quality of our air, water and soil. The Australian community values our natural environments for these ecosystem services and for their rich biodiversity.

International reports have confirmed the value of biodiversity and in particular ecosystem services. For example, the recently released United Nations Environment Program report, *Dead planet, living planet: Biodiversity and ecosystem restoration for sustainable development* (2010), notes that ecosystems deliver essential services worth between US$21 trillion and US$72 trillion a year, which is comparable with the 2008 World Gross National Income of US$58 trillion. At the same time, recent international findings continue to confirm that global biodiversity is in significant and ongoing decline. To tackle the challenge of biodiversity decline we must change how we manage the natural environment. This shift is important if we are to maintain healthy and resilient life-supporting ecosystem functions and biodiversity, particularly in the face of the impacts of climate change on natural ecosystems.

The government is committed to achieving this shift in a way that will result in major improvements built around four key themes:

- a shift from individual project approvals to strategic approaches including new regional environment plans
- streamlined assessment and approval processes
- better identification of national environmental assets, including through provision to list 'ecosystems of national significance' as a matter of national environmental significance under the EPBC Act
- cooperative national standards and guidelines to harmonise approaches between jurisdictions and foster cooperation with all stakeholders.

The government will achieve these improvements through a new way of doing business, supported by systems that are designed to be efficient and effective for the people who use our environmental regulatory system.

To achieve these aims, we must adopt flexible and innovative management practices, and manage our natural assets on a whole-of-ecosystem scale, mindful of interactions and connections across landscapes and seascapes. This means taking account of all environmental assets in an area: including habitats, species, ecological communities, geographical features, native vegetation, heritage values, and water supplies. Significantly, environmental policies and programs must be built on an understanding of how these different aspects of the environment interact, and how best to reduce the impacts of both natural events and human activity.

We need to shift our management approaches to be preventative and proactive, and focus them on a scale where they will be most effective. This means investing more in strategic approaches such as regional environment plans and strategic assessments. In the long run, identifying and avoiding likely environmental harm early in the process will be much more cost effective than trying to fix damage after it has occurred.

Of course, we need to keep our economy strong and maintain our international competitiveness. We need to do this consistent with the Rio Principles of Sustainable Development to which Australia and most other countries subscribed at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro. Among other things, this encourages well-focused and light-handed regulation that imposes the minimum burdens on industry and the economy for maximum environmental gain. This is consistent with the broader better regulation agenda, which the Council of Australian Governments (COAG) is progressing through its Business Regulation and Competition Working Group. Better regulation will also help support the government's broad sustainability agenda, and will help encourage development and growth that maintains the wellbeing of communities, both now and in the future. Regulation that keeps pace with economic development will deliver better results for business, and, in turn, economic benefits.

Resourcing to put in place the reforms quickly is fundamentally reliant on introducing new cost recovery mechanisms under the Act. At present, cost recovery under the Act is very limited. The reforms to the Act will increase business certainty and increase timeliness in decision making, reducing cost for businesses. Appropriate cost recovery arrangements can more equitably share the costs of protecting the environment between the community and those who derive a private benefit and a social licence from an activity that is approved under the Act. Cost recovery will also allow environmental assessments and approvals to keep pace with Australia's growing economy.

The government will be starting a comprehensive consultation process on potential cost recovery arrangements in accordance with the Australian Government Cost Recovery Guidelines. This will directly inform a cost recovery impact statement to ensure that government is fully informed before making a decision on potential new cost recovery arrangements, and determining the size and scale of the reform package.

The purpose of this government response is three-fold:

- This document provides a formal response to the 71 recommendations and several of the findings made in the Report, including an explanation of the policy behind each response. The Report is available at www.environment.gov.au/epbc/review/publications/index.html.
- This response includes some reforms that were not specifically recommended in the Report that will improve the operation of the Act.
- This response is intended to encourage ongoing public discussion as the amendments to the EPBC Act are drafted and debated, and to provide context for subsequent consultation on potential cost recovery arrangements that will help implement the reforms.

The Report was the product of an extensive public consultation process, to ensure the broadest possible range of expertise and views was considered. Dr Hawke received about 340 written public comments during the Review, and conducted more than 140 meetings with a wide variety of stakeholders, including representatives of business and industry, state, territory and local governments, private landowners, environmental and heritage non-government organisations, individuals, scientists, lawyers and other experts.

The government gratefully acknowledges the input of all individuals and organisations who contributed their knowledge, expertise and vision to the Review.

In preparing this response, the government consulted with all state and territory governments, provided information briefings to many key stakeholders, and held roundtable discussions with land-based and marine-based industry, environmental and heritage non-government organisations and scientists and other experts.

The government also recognises the need for substantial ongoing consultation with the state and territory governments on the implementation of the response, and will work closely with all jurisdictions under the guidance of the COAG and other ministerial councils as appropriate.

Given the significant public interest nature of this legislation, and its potentially broad application to all sectors, the government is committed to ongoing consultation.

The government agrees with the Report's conclusion that five processes define the future direction for Commonwealth environmental regulation: harmonisation, accreditation, standardisation, simplification and oversight. The government will develop this new approach within the scope of the Commonwealth's constitutional powers, international obligations and responsibilities, and, where appropriate, existing Commonwealth legislation.

The government response is based around these key themes and five key policy objectives, which were the basis for the terms of reference of the Report. These are to:

- promote the sustainability of Australia's economic development to improve individual and community wellbeing while protecting biological diversity and maintaining essential ecological processes and systems
- work in partnership with the states and territories within an effective federal arrangement
- help deliver Australia's international obligations
- reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards
- ensure activities under the Act represent the most appropriate, efficient and effective ways of achieving the government's outcomes and objectives in accordance with the Expenditure Review Principles.

Overall, the majority of the 71 primary recommendations of the Review complement work done by the Australian Government and other organisations and agencies to progress Australia's management of environmental issues. The Report and this government response provide a solid basis for future endeavours in this critical area of public policy.

As responsibility for the environment is shared between levels of government under the Australian Constitution, effective implementation of the response to the Report will require close collaboration with state and territory governments. The government will progress this aspect of the reform agenda through COAG, relevant ministerial councils, and bilaterally with state and territory governments. This is a commitment to genuine partnership. The government will of course remain responsible and accountable for protecting matters of national environmental significance and other matters protected under the EPBC Act.

The proposed amendments to the EPBC Act will play a key role in the government's broader reform package for the environment. This package will enable the important shift to a more strategic and administratively streamlined, whole-of-ecosystem approach.

This reform package represents a major step towards developing a new generation, streamlined and harmonised national approach to conserving Australia's environment and resources.

Recommendation 1

The Review recommends that the Environment Protection and Biodiversity Conservation Act 1999 *be repealed and replaced with a new Act, the Australian Environment Act, which will:*

1. *be restructured and drafted to modernise, clarify, simplify and streamline both language and process;*
2. *reduce duplication of processes; and*
3. *increase the focus on strategic approaches to environmental management.*

Government response: Agreed in part

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is the Australian Government's key piece of environmental legislation. As recognised in the Report, the EPBC Act has made a significant contribution to environmental protection in Australia. Despite being more than a decade old, the legislation reflects modern drafting practice.

The Australian Government agrees with the intent of Recommendations 1(1), (2) and (3), but will implement these recommendations through amendment of the EPBC Act rather than by drafting an entirely new Act.

The drafting of a new Act would require substantial legislative drafting, stakeholder education and revision of administrative documents. The government will focus on progressing amendments that achieve the greatest outcomes for the environment and for proponents. This approach is consistent with the Review's general acknowledgement that the EPBC Act is still effective in achieving its aims. In a number of cases the amendments will include clarification, simplification and streamlining, in line with the intent of Recommendation 1(1).

The key concepts of the EPBC Act will be retained. These core concepts include applying the principles of ecologically sustainable development, protecting matters of national environmental significance, decision making by the Commonwealth environment minister, and public consultation processes. The operation of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act* (Cth) will not be affected. Generally, it may be assumed that the content of the current provisions of the EPBC Act will be retained in the amended Act, unless they are identified in this response as an area for change.

The amended Act will strengthen provisions relating to strategic approaches, such as strategic assessments, regional environment planning and whole-of-ecosystem management to support healthy and resilient ecosystems. These 'next generation' approaches will be essential tools in meeting the increasing challenges of environment conservation in the context of climate change and other environmental pressures. They will also support the more streamlined progression of development approvals, by providing certainty and reducing administrative requirements.

The government will ensure effective communication of any new approaches and arrangements to relevant stakeholders.

Recommendation 2

The Review recommends that the Act:

1. *confirm ecologically sustainable development (ESD) principles as the overarching principles underpinning decision-making under the Act;*
2. *emphasise that environmental considerations are to be considered first when making decisions under the Act – 'decision-making should integrate both long-term and short-term environmental, social, economic and equitable considerations effectively'; and*
3. *emphasise ESD principle (d) – 'the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making'.*

Government response: Agreed in part

As recognised in the Report, the EPBC Act is the primary vehicle to implement the principles of ecologically sustainable development at the national level. The government remains committed to supporting the principles of ecologically sustainable development and agrees with Recommendation 2(1), that the principles of ecologically sustainable development are fundamental to the operation and administration of the Act. No legislative change is required to achieve this outcome, as these principles are embodied in sections 3(1)(b) and 3A of the Act.

The government does not consider Recommendation 2(2) to be either necessary or desirable. In line with Recommendation 2(1), the established principles of ecologically sustainable development provide a framework that includes appropriate weighing of environmental considerations. This framework is reflected in specific provisions in the Act, including many that require a science-based decision on environmental considerations to be made before social and economic factors are considered—for example, in deciding whether a species meets the criteria for listing as endangered. These principles are also well-established internationally. The government does not propose any change to current decision-making processes, as extensive decision-making practice under the Act, and legal interpretation of that practice, has developed over the past decade in line with Australia's international obligations.

The government does not consider Recommendation 2(3) to be either necessary or desirable. Ecologically sustainable development principle (d) 'the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making' is already included in Section 3A of the Act.

Recommendation 3

The Review recommends that the objects of the Act be revised along the following lines:

1. *the primary object of this Act is to protect the environment, through the conservation of ecological integrity and nationally important biological diversity and heritage.*
2. *in particular, this Act protects matters of national environmental significance and, consistent with this, seeks to promote beneficial economic and social outcomes.*
3. *the primary object is to be achieved by applying the principles of ecologically sustainable development as enunciated in the Act.*
4. *the Minister and all agencies and persons involved in the administration of the Act must have regard to, and seek to further, the primary object of this Act.*
5. *in pursuing the primary object, the Minister should:*
    - *(a) encourage public participation in the making of decisions that impact on the environment;*
    - *(b) promote cooperation with State, Territory and Local government in environmental protection and management;*
    - *(c) assist in the cooperative implementation of Australia's international environmental responsibilities;*
    - *(d) recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity;*
    - *(e) promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge; and*
    - *(f) promote fair and efficient decision-making.*

Government response: Not agreed

The Australian Government believes that the objects of the EPBC Act are already clear, and there is no need to change them as suggested by the Review.

The principles in Recommendations 3(1), (2), (3) and (4) are already given appropriate consideration in the principles of ecologically sustainable development enunciated in Section 3A of the current Act. Among other things, the objects are consistent with the government's intention to increase the focus on strategic approaches such as regional environment planning.

The current Act already recognises the principles specified in Recommendation 3(5), including the promotion and use of Indigenous peoples' knowledge of biodiversity and their role in the conservation and ecologically sustainable use of Australia's biodiversity. The objects of the current Act also reflect the government's commitment to a partnership approach to environmental protection and biodiversity conservation which includes governments, the community, landholders and Indigenous peoples.

Recommendation 4

The Review recommends that the Commonwealth work with the States and Territories as appropriate to improve the efficiency of the Environmental Impact Assessment (EIA) regime under the Act, including, through:

1. *greater use of strategic assessments;*
2. *accreditation of State and Territory processes where they meet appropriate standards;*
3. *accreditation of environmental management systems for Commonwealth agencies where the systems meet appropriate standards;*
4. *publication of criteria for systems and processes that would be appropriate for accreditation;*
5. *creation of a Commonwealth monitoring, performance audit and oversight power to ensure that any process accredited achieves the outcomes it claimed to accomplish;*
6. *streamlining and simplification of assessment methods, including combining assessment by preliminary documentation and assessment on referral information and removal of assessment by Public Environment Report (PER);*
7. *establishing joint State or Territory and Commonwealth assessment panels;*
8. *use of joint assessment panels or public inquiry for projects where the proponent is either the State or Territory or Australian Government; and*
9. *greater use of public inquiries and joint assessment panels for major projects.*

Government response: Agreed

Improving the efficiency of the environmental impact assessment regime is a top priority for the Australian Government. In particular, the government is looking to increase its strategic and early engagement with proponents, and in development planning, including by working with states and territories through strategic assessment and regional environment planning. These strategic approaches will better protect matters of national environmental significance, while supporting sustainable development. Strategic approaches also have significant benefits to proponents by increasing certainty and improving investment opportunities at an early stage, and by reducing the need for individual project referrals. This approach will be supported by compliance and performance auditing to ensure agreed plans and conditions are complied with. More generally, the government agrees to reform the project approvals system consistent with the move to more strategic approaches, including through the mechanisms outlined in Recommendations 6 and 27.

The EPBC Act already provides various measures to accredit or otherwise recognise mechanisms that operate to provide equivalent protection of matters of national environmental significance, including:

- strategic assessments to endorse plans, policies or programs, including those of state and territory governments, and then to approve actions under endorsed programs
- bilateral agreements to accredit state and territory environmental assessment and approval regimes
- conservation agreements
- case-by-case accreditation of environmental impact assessment processes of states and territories.

The government is committed to enhancing the scope and use of these mechanisms to reduce duplication of systems and provide more certainty for business without reducing protection for matters of national environmental significance.

Strategic assessments (Recommendation 4(1))

The government agrees to support increased use of strategic assessments, and recognises the efforts of the COAG Business Regulation and Competition Working Group in driving the uptake of this mechanism. The endorsement of the *Delivering Melbourne's newest sustainable communities: Program report* and subsequent approval of actions in 2010 represents the first strategic assessment of a plan under the Act. Strategic assessments are currently under way in every state and the Australian Capital Territory, and all jurisdictions have expressed in-principle support for their increased use.

In carrying out strategic assessments, the government will work closely with the state and territory governments to ensure there are no unintended outcomes such as duplicative regulatory requirements.

Accreditation (Recommendations 4(2), (3) and (4))

The government agrees with the concept of accrediting systems and processes that meet appropriate standards, thereby removing the burden of individual project assessments.

The Act already contains mechanisms to accredit certain systems and processes, including assessment and approval bilateral agreements, strategic assessments, accredited management arrangements, and accredited authorisation processes. The government will amend existing accreditation mechanisms to provide for accreditation of state, territory or Commonwealth systems for individual project approvals that meet national standards. The minister would be able to set those standards by determination. This provision will require the minister to seek to reach agreement with the states and territories on those standards, but, if unable to secure agreement, the minister may still promulgate the standards. The standards would set minimum requirements for both assessment (including public consultation) and approval, in relation to matters of national environmental significance. The minister must be satisfied that the national standards would deliver equivalent protection of matters of national environmental significance to the protection provided by the Act.

It would also be possible for particular processes or parts of a system to be accredited by the minister even if the whole system does not meet the national standards. This could apply where parts of state, territory or Commonwealth systems meet the national standards for a particular type of assessment or project or a particular process. Decisions made under the accredited system would apply in place of a decision that would otherwise be made under the Act.

As well as processes for assessing individual projects, other systems that will be able to be accredited under the powers of accreditation include state and territory species listing processes (Recommendation 5) and suitable state or territory offset schemes for biodiversity protection (Recommendation 7).

The government also notes that the amended Act will clearly specify the process for withdrawing accreditation in the case of non-compliance or a failure to achieve adequate environmental protection outcomes.

Audit function (Recommendation 4(5))

The government agrees to develop a monitoring, performance audit and oversight power to ensure accredited Commonwealth, state and territory systems and processes achieve the intended results. Further discussion of the detail of this power is in the response to Recommendation 61.

Changes to environment impact assessment processes (Recommendations 4(6), (7), (8) and (9))

The government agrees to amend the Act to remove assessment by public environment report, as it is almost identical to assessment by environmental impact statement. This will reduce the complexity of the assessment provisions without reducing public engagement.

The government agrees the amended Act should allow for joint state or territory and Commonwealth assessment panels to be established, and should include provisions to ensure that these panels consider fully all relevant Australian Government interests at the same time as considering all relevant state or territory interests. The government notes that creating joint assessment panels might also require amending state and territory legislation, and it will initiate discussions with state and territory governments to determine the best way to proceed.

The government notes the particular value of using joint assessment panels with states and territories, and supports the continued availability of public inquiry assessments in the case of controversial major project proposals, and where a government is the project proponent, as this reduces the potential for conflict of interest. The government notes that joint assessment panels and public inquiries will not always be appropriate for assessing government projects, and affirms that the decision on assessment method should remain at the Commonwealth environment minister's discretion.

Recommendation 5

The Review recommends that Australian, State and Territory governments move to a single national list of threatened species, including marine species and ecological communities, through accreditation of State and Territory processes for listing endemic species. This process should include:

1. *agreed accreditation for listing;*
2. *agreed protocols;*
3. *minimum procedural standards; and*
4. *consistent documentation standards.*

Government response: Agreed

The Australian Government agrees with the Review's finding that there are inconsistencies and inefficiencies between jurisdictions in the listing of threatened species and ecological communities. The government also notes the need to make the lists of all Australian jurisdictions centrally available, and is committed to addressing these issues.

The government currently maintains a single list of nationally threatened species and ecological communities (as opposed to a single national list of threatened species), under section 178 of the EPBC Act. The difference is that not all species threatened in one jurisdiction are threatened in other jurisdictions or nationally. Some may be threatened locally but abundant elsewhere.

The government is committed to developing a single list comprising multiple parts. Part 1 would consist of all nationally threatened species and ecological communities, all of which would be afforded protection under the Act as matters of national environmental significance.

There would be another eight parts of the list, one for each state and territory, consisting of all species and ecological communities threatened in each jurisdiction, but not nationally. None of the species and communities in these parts of the list would be matters of national environmental significance under the Act. Their protection would be afforded by the states and territories under their own legislation or other arrangements.

The government is of the view that all parts of the new list should be based on nationally agreed and scientifically robust criteria, consistently and rigorously applied. The government will amend the Act to provide for accreditation of state and territory listing processes that meet these national standards. This will minimise duplication of assessment processes, but will not affect the Commonwealth's capacity to assess any species or ecological community, nor the minister's discretion in deciding whether and in what category it should be listed.

Once accredited, any state or territory listing that meets the criteria for 'nationally threatened' will be added to Part 1 of the new list without the need for a separate assessment by the Commonwealth. This arrangement will deliver straightforward listing alignment across jurisdictions. The government's response to Recommendation 4 contains more information pertaining to accreditation.

Consultations with state and territory governments about ways to tackle existing misalignment of threatened species and ecological communities lists have already begun, with arrangements on list alignment having been or being negotiated with all states and territories. The government will continue, and accelerate, this work to develop national standards that will eliminate differences in species and communities profiles and listing advices.

Recommendation 6

1. *The Review recommends that the Australian Government:*
    - *(a) expand the role of strategic assessments and bio-regional plans so that they are used more often; and*
    - *(b) strengthen the process for creating these plans and undertaking these assessments, so they are more substantial and robust;*
2. *The Review further recommends that the Act be amended to provide:*
    - *(a) for bio-regional plans to –*
        - (i) *change the terminology from 'bio-regional plans' to 'regional plans';*
        - (ii) *allow the Commonwealth to unilaterally develop regional plans; and*
        - (iii) *ensure that the process for delineating a region for the purpose of the Act is flexible; and*
    - *(b) for strategic assessments to –*
        - (i) *specify mandatory required information for strategic assessments;*
        - (ii) *insert an 'improve or maintain' test for the approval of a class of actions in accordance with an endorsed plan, policy or program;*
        - (iii) *enhance provision for public engagement; and*
        - (iv) *create a 'call in' power for plans, policies and programs likely to have a significant impact on matters of National Environmental Significance, and amending the term 'action' to incorporate these plans, policies or programs; and*
    - *(c) for creation of a broad performance audit power to assess the performance of accredited systems.*

Government response: Agreed in substance

Recommendation 6(1): Agreed

The Australian Government accepts the need for a strengthened package of strategic measures designed to conserve protected matters at ecologically relevant scales in a streamlined way. The government agrees to increase the use of strategic approaches including strategic assessment and regional environment planning (see response to Recommendation 6(2)(a)(i) for note on terminology) to achieve environmental objectives, support sustainable development, help maintain ecosystem services and deliver business certainty. The government also notes that it is already doing several strategic assessments, and that approaches to the use of this mechanism are continually being refined.

Multiple developments, plans and programs may often have a cumulative significant impact on matters of national environmental significance, but individually will not necessarily trigger the project assessment provisions of the EPBC Act in its existing or amended form. By considering this cumulative impact, a proactive and holistic strategic approach is more likely to result in the best environmental outcomes.

The government recognises the value of working with state and territory governments to produce integrated plans and assessments that direct, manage and encourage complementary efforts by Commonwealth, state, territory, and local governments, within their respective spheres of responsibility, as well as the conservation efforts of non-governmental organisations and private landholders.

Guidelines will be developed to direct the use of strategic assessments and regional environment planning to ensure that government processes are streamlined. The tools will also be flexible enough to allow them to be tailored on a case-by-case basis. Once the assessment or planning need has been identified, and issues of scale and efficiency considered, the most suitable tools can be chosen and tailored appropriately.

Regional environment planning and the strengthened process for strategic assessments will provide an effective means to integrate both long-term and short-term environmental, economic and social considerations, consistent with the principles of ecologically sustainable development. This integrated planning and assessment will support the maintenance of ecosystem services and achieve conservation outcomes across the landscape and marine environment. As per current practice with strategic assessments, the minister will continue to make the final decision as to whether regional environment plans and strategic assessments should be endorsed. The minister will then approve classes of actions that are authorised to proceed without further assessment, under the regional environment plan or the policy, plan or program which was strategically assessed.

A landscape approach will be further promoted through: regional recovery planning; strategic identification and management of key threatening processes; and protection of ecosystems of national significance as a new matter of national environmental significance. The government notes that the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts' report *Managing our coastal zone in a changing climate* recommends making more use of landscape-scale assessments through strategic assessments or regional environment plans to tackle the cumulative impacts of coastal development.

As with current regional environment plans and strategic assessments, the minister will be able to approve classes of actions that are consistent with the regional environment plan or the strategically assessed policy, plan or program, without further assessment under the Act. Neither regional environment plans nor strategic assessments will impose additional obligations on private landholders. Rather, they will avoid the need for proponents to submit an individual referral provided their action is in accordance with an approved class of action. Where that is not the case, then the proponent could use the existing individual referral processes under the Act to seek an environmental approval.

Marine specific issues

The government is currently developing five marine bioregional plans. These will not be affected by the expansion of strategic approaches under the amended Act, as they are already consistent with this approach.

A regional environment plan or strategic assessment will not invalidate the strategic assessment of a fishery approved under the Act. Fisheries assessment processes will be streamlined under the amended Act, as outlined in the response to Recommendation 40.

Set out below are responses to each of the sub-paragraph of the Recommendation.

Recommendation 6(2)(a): General comments

The government favours an increased role for regional environment planning that will enable Commonwealth environmental interests to be considered at a regional scale, and for all levels of government to work together and align processes. Environmental planning at a regional scale provides an important opportunity to work collaboratively with state and local government, regional natural resource management organisations, and community stakeholders to conserve protected matters while enabling the development of sustainable communities. Regional environment plans will be informed by, and in turn inform reviews of, various existing relevant planning documents, such as regional natural resource management plans.

The functions of these plans may include guiding and coordinating, within a defined geographical area, the:

- identification and collection of information on matters of national environmental significance across a region
- priorities for Australian Government programs, such as Caring for our Country
- mechanisms to provide business certainty and guide future development to better manage cumulative impacts
- investment in environmental conservation through offsets and offsetting schemes to create positive conservation outcomes that, wherever possible, will also bring economic and social benefits to communities
- prioritisation of recovery plans and actions
- management of environmental threats by identifying and implementing threat abatement plans
- management planning, including for World and National Heritage areas, Ramsar sites and Commonwealth land
- identification, assessment and possible listing of ecosystems of national significance.

This list of issues covered by regional environment plans is not exhaustive. Regional environment plans will also include provisions about relevant economic and social values. They will focus on outcomes and would facilitate innovative land use practices.

Regional environment plans will be binding on Australian Government agencies.

Recommendation 6(2)(a)(i): Not agreed

The amended Act will use the term regional environment plans, rather than regional plans as recommended, to emphasise that the environment is the central consideration of the planning.

Recommendation 6(2)(a)(ii): Agreed

The government will amend the Act to allow regional environment plans to be developed in partnership with states and territories outside of Commonwealth areas, and to allow the government to develop regional environment plans unilaterally in these areas, as a last resort. The government's strong preference is to develop these plans in cooperation with the states and territories, with the state or territory taking the lead and the Commonwealth participating actively in relation to matters of national environmental significance. The government also envisages that these plans would be developed in consultation with natural resource management bodies, industry and regional or local groups. Unilateral development of regional environment plans should occur only where the plan applies exclusively to Commonwealth actions and land or, as a last resort, on non-Commonwealth land where the minister is satisfied that all reasonable efforts to agree on a cooperative approach with the relevant state or territory have been unsuccessful.

Recommendation 6(2)(a)(iii): Agreed

The amended Act will allow the minister to delineate a region at a range of scales. This will ensure planning occurs at the appropriate scale, and balances a range of considerations including environmental matters, ecological function, political geography and existing regional planning information. The amended Act will also include provisions corresponding to the existing provisions in relation to strategic assessments (section 146), for the Commonwealth and the relevant state or territory to agree on the terms of reference and other governance and machinery matters required to develop the proposed regional environment plan.

Recommendation 6(2)(b): General comments

The government is already doing several strategic assessments, and the use of this mechanism are continually being refined. The government will amend Part 10 of the Act to ensure there is a robust process for all stages of strategic assessment, providing the minister with equivalent powers to those for individual project assessments, where appropriate. The process will take into account the particular context of strategic assessments, such as the time frame for which the strategic assessment applies and engagement processes with multiple proponents. EPBC Act processes for the strategic assessment of fisheries will also be streamlined under the amended Act, as outlined in the response to Recommendation 40.

The government will amend the Act to allow minor variations to endorsed policies, plans or programs in specified circumstances, so that they can accommodate adaptive management, and be flexible enough to deal with emerging issues, while continuing to provide certainty for actions approved following a strategic assessment.

Strategic assessments differ from regional environment plans in that they assess the impacts of specific actions proposed to be taken in accordance with a plan, policy or program on matters of national environmental significance, while regional environment plans will focus on identifying ecologically sustainable land uses in a particular geographical area.

The government supports strategic assessments for:

- early consideration of matters of national environmental significance in the planning process
- greater certainty for local communities, landholders and developers in relation to future development
- reduced administrative burden for proponents and governments
- increased capacity to achieve better environmental outcomes and address impacts (particularly cumulative impacts) across the landscape and marine environment.

To ensure strategic assessments achieve these outcomes, the government will amend the Act so that the minister may only endorse a strategically assessed policy, plan or program where he or she is satisfied actions taken in accordance with the policy, plan or program will be ecologically sustainable.

The government notes the existing work of COAG in developing integrated criteria for capital city strategic planning systems, and supports the use of strategic assessments under the amended Act to help achieve these outcomes. The amended Act will include a mechanism that will allow the minister, having taken into account the matters currently in sections 146F–146M, to include a list of approved classes of actions (and conditions if appropriate) at the time of endorsing a strategically assessed plan, policy or program or a regional environment plan.

Recommendation 6(2)(b)(i): Agreed

The government agrees to produce guidelines for identifying matters that should be covered by strategic assessments. This will provide people responsible for a plan, policy or program with a guide to the type and standard of information that would be required as part of the assessment. These guidelines will also inform the negotiation of the terms of reference for any strategic assessment done under the Act.

The government agrees that the Act should be amended, so that any report to the minister seeking endorsement of a plan, policy or program should contain at a minimum: the strategic assessment report; any report by an expert or expert body commissioned by either party to the strategic assessment; any public submissions (including a summary of public submissions) on the strategic assessment report; and any public submissions (including a summary of public submissions) made during the assessment.

Recommendation 6(2)(b)(ii): Not agreed

The government does not support an ‘improve or maintain’ test at the time of approval of classes of actions. This is because an evaluative test has already been applied at the earlier stage of endorsement of the policy, plan or program. At the subsequent stage of approving classes of action, the test should be based on conformity to the endorsed plan. Many of the

benefits from strategic assessments flow from consideration of the assessed policy, plan or program as a whole. The government will therefore maintain the minister's ability under the Act to approve a class of actions that conform to the endorsed policy, plan or program.

Recommendation 6(2)(b)(iii): Agreed

The government agrees with the Review's proposal that the two periods for public comment on a strategic assessment remain. The government proposes these periods should be:

- a minimum of 15 business days for public comment on the draft terms of reference
- a minimum of 40 business days for public comment on the draft report.

The government does not agree with the Review's finding (paragraph 3.58) that the period for public comment should be increased to a minimum period of 60 business days, as this may discourage people responsible for putting in place a plan, policy or program from taking part in a strategic assessment. The government will support longer periods of consultation where this would better meet community interests, and would not compromise the objective of encouraging use of strategic assessments.

The government supports the use of other forms of early engagement, such as community meetings and information sessions, as appropriate.

Strategic assessments can currently be applied to plans, policies and programs of the Australian Government. The government supports increasing their use in this context.

Recommendation 6(2)(b)(iv): Not agreed

The government strongly supports strategic assessment as a cooperative, inter-jurisdictional measure for environmental protection. Using a coercive power to require a strategic assessment is unlikely to realise the benefits of this cooperative approach. However, the government acknowledges that policies, plans or programs might be developed by third parties who inappropriately encourage actions that have significant impacts on matters of national environmental significance. In these circumstances the minister will be able to use a significant impact determination (described in the response to Recommendation 27) to make it clear that classes of actions, taken in accordance with the unendorsed plan, policy or program concerned, will require assessment and approval under the Act.

The government therefore does not agree that it is necessary to amend the term 'action' to incorporate plans, policies or programs.

Recommendation 6(2)(c): Agreed

The government agrees to develop a monitoring, performance audit and oversight power to ensure strategic assessments of plans, policies or programs achieve their intended results.

All accredited systems will be required to have in-built review and performance audit mechanisms, to be triggered no less than every five years.

The response to Recommendation 61 (the general audit recommendation) contains further discussion of audit arrangements.

Recommendation 7

1. *The Review recommends that:*
   - (a) *the Council of Australian Governments (COAG) develop a national biodiversity banking (biobanking) system and standards; and*
   - (b) *the Australian Government in the interim, accredit State and Territory biobanking schemes, subject to their meeting acceptable standards.*
2. *The Review further recommends that Act should be amended to:*
   - (a) *facilitate and promote the use of biobanking as part of project approvals; and*
   - (b) *facilitate the operation of a national biobanking scheme.*

Government response: Agreed in principle

The Australian Government supports the use of market-based incentives for biodiversity management, and recognises that biodiversity banking is one of many potential market-based incentives for environmental protection.

The government agrees to lead consideration of a national system or national standards for biodiversity banking and environmental offsets through an inter-jurisdictional forum. A national system should be complementary to, and build on, the successful elements of existing state schemes.

The government will amend the EPBC Act to provide for the use or accreditation of biodiversity banking schemes that meet the national standards. This would be allowed through the accreditation processes agreed in the response to Recommendation 4(2)(3).

Biodiversity banking ('credits for conservation' or 'conservation banking') is a term used to describe market-based systems that place financial value on biodiversity assets. They provide mechanisms to achieve positive biodiversity outcomes through a market trade in 'credits' to offset the unavoidable impacts of land use change that degrades the conservation value of an area. They also provide certainty to business by identifying potential offsets early, and help rural landholders to diversify their income stream leading to greater regional sustainability.

The national standards associated with biodiversity banking should ensure that land used as an offset is protected in perpetuity, and offsets include appropriate funding for ongoing management (see below). For both proponent and landholder, any scheme would be voluntary.

The government notes that, if agreed, national standards would need to complement other policies and programs. In this context the government is releasing an Environmental Offsets Policy to explain the role environmental offsets should play, and the preconditions to their use under the EPBC Act as it stands. This policy will be reviewed once the amended Act is passed.

Biodiversity banking may be used not only as a system to manage offsets, but also to achieve policy objectives in biodiversity conservation by providing a vehicle for philanthropic investment, and as a conservation evaluation tool. The government supports these uses of biodiversity banking, and agrees that covenanting programs and other mechanisms designed to integrate public and private conservation should be addressed in the national standards.

As a market-based instrument, biodiversity banking is one of several tools governments should use to achieve policy results. It will be best used in combination with other processes such as regulatory mechanisms and programs including the National Wildlife Corridors Plan and the Caring for our Country initiative, which is investing $2 billion over five years in the ongoing protection and sustainable management of Australia's natural environment and agricultural resources.

Two states have developed market-based approaches to offset schemes based on metrics —'BushBroker' in Victoria and 'BioBanking' in New South Wales. The government recognises that biodiversity banking schemes are in their infancy, but expects that as they mature, positive environmental results will be delivered.

Recommendation 8

The Review recommends that the Act be amended to include 'ecosystems of national significance' as a new matter of national environmental significance. The 'matter protected' should be the ecological character of a listed ecosystem.

The criteria used to identify ecosystems should be along the following lines:

1. *the ecosystem is of significant national value for one or more of the following reasons:*
    - *(a) it has high comparative biological diversity, within its ecosystem type;*
    - *(b) it provides critical nationally important ecosystem functions;*
    - *(c) it has a significant potential contribution to building resilient sustainable landscapes;*
    - *(d) it contains high value remnants of a particular type of habitat;*
    - *(e) it contains high value areas that create connectivity between other ecosystems;*
    - *(f) it is significant in building a comprehensive, adequate and representative system of habitat types in Australia;*
    - *(g) it provides habitat critical to the long term survival of a significant number of threatened species listed under this Act;*
    - *(h) it is a climate change refuge of national significance;*
    - *(i) it is under severe and imminent threat; and*
2. *ecosystems that are currently under-represented in existing environmental management regimes should be considered as a priority for listing.*

Government response: Agreed in substance

The most significant threats to Australia's biodiversity—such as habitat loss, invasive species and climate change—operate at a landscape scale. A prominent theme of the Review, which the government supports, is that biodiversity is better conserved through strategic approaches that apply and address these threats at a landscape scale. This recommendation is integral to that theme and is supported by the government, with the aim of achieving three key conservation outcomes: ecological resilience; connectivity; and adaptation to climate change.

Healthy, resilient ecosystems have the best capacity to continue to function and provide ecosystem services under a changing climate. Ecosystem resilience is built by maintaining connectivity between habitats and protecting climate refuges. Resilient ecosystems maximise the likelihood that species will be able to adapt to changing climatic conditions—for example, by allowing species to move along wildlife corridors as conditions change. For the EPBC Act to help maintain ecosystem resilience, it needs to become more able to address the cumulative impact of threats to ecosystems through a whole-of-ecosystem approach. Both Australia's Biodiversity Conservation Strategy 2010–2030 and the Convention on Biological Diversity promote a whole-of-ecosystem approach to conservation.

Building resilient ecosystems enables them to continue to provide critical ecosystem services such as food, fibre, fuel, clean air, clean water, pollination, soil formation and retention, and many other supporting and cultural services that underpin our economic and social wellbeing. Current regulatory approaches do not specifically protect ecosystems and their ongoing functioning, which is necessary for the production of these critical ecosystem services.

The government will therefore amend the Act to introduce ecosystems of national significance as a new matter of national environmental significance, to better integrate the conservation of ecosystems into development planning and environmental assessment processes. Ecosystems of national significance will be identified, spatially defined and assessed through one of the following strategic approaches: regional environment plans, strategic assessments, or conservation agreements with the states and territories. General descriptions of ecosystem types will not be eligible for listing as ecosystems of national significance.

Protecting ecosystems through strategic approaches will ensure that measures required to maintain the long-term health and resilience of ecosystems and ecosystem services will be considered in the context of the broader long-term sustainability of the region concerned. This will include the appropriate weighing of social, economic and environmental factors, consistent with the principles of ecologically sustainable development.

The identification of ecosystems of national significance through strategic approaches will deliver:

- the protection of nationally significant conservation assets in the long term
- greater certainty for development options in assessed regions due to the integrated consideration and weighing of economic, social and environmental factors.

Implementation

Ecosystems of national significance will only be able to be declared within an area that has been assessed under one of the strategic approaches. As part of making his or her decision on whether to approve the broader plan or assessment, the minister will consider identified ecosystems and decide whether listing as an ecosystem of national significance is appropriate.

Ecosystems of national significance will be identified through strategic approaches, and there will be no separate public nomination process. Stakeholders will have the opportunity to propose ecosystems for possible listing, and to comment on ecosystems under consideration, as part of the public consultation under the relevant strategic approach. To ensure thorough and balanced consideration, in the context of the objects of the Act including ecologically sustainable development, the environment minister will be required to consult relevant ministers with an interest in the relevant region, plan, policy or program being assessed and to consider economic, social and environmental factors.

As with other matters of national environmental significance, if a proposed action is likely to have a significant impact on a listed ecosystem of national significance, it will need to be referred under the Act. As ecosystems of national significance will be identified, assessed and listed through a strategic approach, guidance about acceptable actions will be included in the plan endorsed by the minister. This will minimise uncertainty around what may or may not constitute a potentially significant impact on the listed ecosystem, as well as reduce the need for individual assessments under the Act.

The government's view is that the 'matter protected' should be the ecosystem itself, rather than the ecological character of the ecosystem as recommended. This approach will allow a clear delineation of the boundaries of the ecosystem protected under the Act, rather than a more qualitative description of character, which may be open to interpretation and result in uncertainty. 'Ecosystem' will be defined as it is in the current Act: 'Ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit'.

Consistent with the Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment (1997), and as reflected in section 25 of the Act, the government will consult with the states and territories on the inclusion of this new matter of national environmental significance. The other existing matters of national environmental significance will remain unchanged. Threatened ecological communities and species will remain protected as existing matters of national environmental significance.

Recommendation 8(1): Agreed in substance

The government has considered the criteria for ecosystems of national significance outlined by the Report, and supports them with the exception of (i). These criteria will be established by regulation.

A key benefit of listing an ecosystem of national significance is that it will provide a significant new tool to conserve healthy ecosystems and the ecosystem services they provide. This is in contrast to the existing provisions to list threatened species and ecological communities, which are focused on protecting and recovering species and communities already in decline. The government considers that a preventative approach is more likely to be a cost-effective conservation measure, addressing cumulative impacts and achieving good environmental outcomes for ecosystems while providing more certainty for business. Therefore, while the threatened status of an ecosystem is of obvious concern, it should not be a criterion for listing as an ecosystem of national significance.

Recommendation 8(2): Agreed in principle

While the government agrees that the listing of ecosystems of national significance should be approached with due regard to national priorities, and that under-representation in existing environmental management regimes is an appropriate factor in setting priorities, it regards this as a policy matter and so will not include under-representation in the criteria set by regulation.

Recommendation 9

The Review recommends that water plans that authorise actions that, as a whole, have, will have or are likely to have a significant impact on a protected matter undergo strategic assessments and approvals.

The Review recommends that the Basin Plan prepared under the Water Act 2007 *(Cth) be strategically assessed to ensure activities authorised by the Plan are compliant with the Act. Water plans that fully comply with the requirements of the accredited Basin Plan should not require assessment under the Act.*

Government response: Not agreed

The Australian Government supports the move to a more strategic approach to environmental assessment and approval, and notes that strategic assessments in relation to water resource plans can be done already under the EPBC Act. The government also notes that strategic assessment of water resource plans should be designed to complement the implementation of state and territory government obligations under the National Water Initiative, and, within the Murray Darling Basin, the Murray Darling Basin Plan. However, the government considers that such assessment should not be mandatory, but that a decision as to whether a water resource plan should be strategically assessed should continue to be made on a case-by-case basis.

The government does not agree with the Review's recommendation to strategically assess the Basin Plan, because the Basin Plan is likely to be a high-level planning document supported by, and to a large extent implemented through, state-based water resource plans. As such, the content of the Basin Plan is not likely to contain enough detail for strategic assessment.

Recommendation 10

The Review recommends that:

1. *an interim greenhouse trigger, with a threshold of at most 500,000 tonnes of carbon dioxide equivalent emissions, be introduced as soon as possible by way of Regulation to sun-set upon commencement of the Carbon Pollution Reduction Scheme; and*
2. *the Act be amended to insert a requirement to consider cost-effective climate change mitigation opportunities as part of strategic assessments and bio-regional planning processes.*

Government Response: Not agreed

In relation to Recommendation 10(1), the Australian Government is committed to introducing a carbon price as a central element of its strategy to reduce Australia's national greenhouse gas emissions. It has established a Multi-Party Climate Change Committee to explore options for the introduction of a carbon price, and business and environmental roundtables to engage the business community, environment and non-government organisations on its climate change policies. The government expects that over the period before a carbon price is introduced investors will take account of a future carbon price in their investment decisions. As a consequence, the government does not consider that an interim greenhouse trigger would materially influence the emissions associated with decisions taken on projects during the period over which an interim greenhouse trigger might operate.

The government recognises the issues underlying Recommendation 10(2)—that is, current decisions about the location and design of urban development and transport infrastructure can lock in high emissions from transport for decades into the future. However, the government does not consider the approach proposed in Recommendation 10(2) to be the best way to address this issue. Rather, the government is carefully considering various tools to drive emissions mitigation in urban development and transport infrastructure identified in the Report of the Prime Minister's Task Group on Energy Efficiency.

Recommendation 11

The Review recommends that the Australian Government consider implementing additional protection for non-forest native vegetation through the eligibility requirements for reforestation projects under the Carbon Pollution Reduction Scheme (CPRS); for example, by not issuing credits for activities that are occurring on land that has been cleared of remnant native vegetation within a specified time frame. Such a system would need to be supported by strong monitoring and compliance.

The Review further recommends that the monitoring of land clearance activities associated with the compliance needs of both the CPRS and the Act be integrated into a single system.

Government response: Agreed

The Australian Government will not introduce the Carbon Pollution Reduction Scheme (CPRS) as proposed at the time of the Review. The government is committed to introducing a carbon price as a central element of its strategy to reduce Australia's national greenhouse gas emissions, transitioning to an emissions trading scheme after three to five years.

The government is also looking at complementary measures to reduce emissions, such as the Carbon Farming Initiative (CFI). Under the proposed CPRS only reforestation activities were to be considered for carbon offsetting emissions. In contrast, the Carbon Farming Initiative recognises a broad range of land use and management activities as eligible carbon offset projects, such as non-forest vegetation projects and managing remnant or existing stands. This broader recognition of eligible carbon offset projects should provide greater protection for non-forest native vegetation than was afforded under the proposed CPRS.

The concerns raised in this recommendation about the proposed CPRS have also been raised about the Carbon Farming Initiative, particularly in the possibility of perverse outcomes for the environment through reforestation programs for carbon sequestration. To address these concerns, the Carbon Farming Initiative will require projects to have obtained all regulatory approvals and met regulatory requirements from all levels of government before they receive final approval. Project proponents must also take account of relevant regional natural resource management plans.

The government will also provide for a 'negative list' of abatement activities that are ineligible for Carbon Farming Initiative credits because they have a high potential for adverse social, agricultural or environmental outcomes. The scheme disallows abatement projects that involve, or make use of material derived from the destruction of native forests—for example, projects involving the conversion of native forests into biochar. Projects involving uses of native forests that are consistent with keeping the forests healthy and intact, such as harvesting bush foods and selective thinning, would be allowed.

The protection of non-forest native vegetation, such as native grassland, is primarily the responsibility of Australia's states and territories, through the regulation of land clearing. In addition, the EPBC Act protects non-forest native vegetation where it is covered by a matter of national environmental significance. This protection will continue under the amended Act—that is, non-forest native vegetation will continue to be protected where it is either a listed ecological community or habitat for listed threatened species. The amended Act also regulates land clearing done by Australian Government agencies or on Commonwealth land where the impact on the environment is considered significant.

The government will continue to work collaboratively with state and territory governments so that native vegetation definitions and management systems across Australia are more consistent and comprehensive. In particular, the Australian Government is working with state and territory governments to revise Australia's Native Vegetation Framework. The revised framework, once endorsed by all governments, will strengthen a consistent national approach to managing native vegetation.

The government is also proposing mechanisms to support biodiversity co-benefits within the reforestation scheme. These biodiversity co-benefits could be noted on a Carbon Farming Initiative register of reforestation projects, to help establish a 'premium' market for emissions units from projects that offer co-benefits.

The government supports streamlining the monitoring of land clearance activities to support the compliance needs of both the amended Act and the Carbon Farming Initiative, and will explore such opportunities as the scheme is implemented, including through the National Carbon Accounting System. The government notes that its powers to regulate land clearing are limited to the protected matters under the Act. The state and territory governments have primary responsibility for monitoring, compliance and enforcement in relation to clearing of native vegetation not protected by the Act.

Recommendation 12

The Review recommends that the Act be amended to:

1. *require the identification of critical habitat for listed threatened species at the time of listing; and*
2. *discontinue the Register of Critical Habitat once information about critical habitat has been included in listing documentation.*

Government response: Agreed

The Australian Government accepts Recommendation 12(1). Identifying critical habitat at the time of listing can provide significant environmental and compliance benefits by:

- providing early and clear direction to help recovery effort and decision making in relation to threatened species
- improving proponents' access to information to help with environmental impact assessment processes
- informing the development of regional environment plans.

Under the existing EPBC Act, the Threatened Species Scientific Committee develops a conservation advice for each listed threatened species, which must be approved and publicly released by the minister shortly after listing. The amended Act will require a description and location of critical habitat known at the time of listing to be included in each conservation advice prepared in the listing process for threatened species.

The lack of such information should not delay the listing process. Under the Act, conservation advice, including information about areas necessary for a species to persist and maintain its resilience and ecological function, can be updated as new information becomes available.

Under the Act, 'critical habitat' is currently defined as habitat that is 'critical to the survival of a listed threatened species or listed threatened ecological community'. The government will amend the Act to include a new definition of critical habitat: 'all elements of a species' habitat that are important to its ongoing persistence and resilience in a landscape and/or marine environments'.

For a threatened species, this includes habitat required for the species to recover to levels that are viable in the long term considering current and known emerging threats. Under the new definition, critical habitat will be able to be described by habitat type or as a particular location.

This new definition of critical habitat will also apply to the recovery planning provisions under the amended Act.

The government notes that this new definition of critical habitat excludes threatened ecological communities. The government considers that the existing practice of providing advice at the time of listing a threatened ecological community on key diagnostic characteristics, condition, and key sites, is the appropriate equivalent to 'critical habitat' for ecological communities. This is further explained in the government's response to Recommendation 13.

The government also accepts Recommendation 12(2) to discontinue the Register of Critical Habitat. The government notes that the Register of Critical Habitat has only a small number of listings, principally because offences relating to critical habitat only apply in Commonwealth areas under the Act, and because the listing of areas outside of Commonwealth areas on the register does not offer legal protection.

However, the government sees value in maintaining geographical information on critical habitat of listed species, in order to improve access to this information for project proponents. The government is of the view that this information should be readily searchable to an appropriate level of detail by prospective proponents, and should inform strategic approaches taken under the Act.

Appropriate transitional arrangements will be made to ensure information contained in the Register of Critical Habitat is incorporated into conservation advice and recovery plans. In repealing the Register of Critical Habitat, the government notes there is already appropriate protection for critical habitat through controls on activities that may have a significant impact on a protected matter. Further, critical habitat on Commonwealth land will continue to be protected through the approval requirements on all activities involving Commonwealth land that are likely to have a significant environmental impact.

Recommendation 13

The Review recommends that the Act be amended to require the Threatened Species Scientific Committee to indicate in the listing process the areas necessary for an ecological community to persist and maintain its ecological function.

Government response: Agreed

The Australian Government will amend the Act to require that areas known to be necessary for an ecological community to persist and maintain its resilience and ecological function should be identified at the time of listing.

This requirement will formalise the current practices of the Threatened Species Scientific Committee in identifying such areas in listing and conservation advice. These practices include specifying 'condition thresholds' that identify areas of an ecological community that are in the best condition and most functional, as well as recommending appropriate buffer zones to mitigate threats. These measures are important to manage and protect sensitive and high condition areas effectively from disturbances and threats. They are consistent with the approach agreed to in the response to Recommendation 12, relating to critical habitat for threatened species.

As outlined in the government response to Recommendation 12, lack of such information should not delay the listing process for species, and this is also the case for ecological communities. Conservation advice can already be added to at any time as new information becomes available—for example, through the recovery planning process. As for species listings, this practice will continue under the amended Act.

The government agrees that the listing of ecological communities will continue to play an important role under the amended Act, and acknowledges the need to increase understanding of whole-of-ecosystem and landscape-scale approaches to conservation.

The government will implement these new approaches in consultation with the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68) and other experts. These reforms will be implemented in a way that will minimise administration and regulatory burden while providing the optimum protection for ecological communities.

Recommendation 14

The Review recommends that the Act be amended to include vulnerable ecological communities as a matter of national environmental significance protected under Part 3.

Government response: Agreed

The Australian Government accepts that the protection mechanisms for ecological communities under the EPBC Act should be consistent with those for threatened species. There is an inconsistency between the Act's provisions on vulnerable ecological communities and those on vulnerable species and endangered and critically endangered ecological communities. The discrepancy is that vulnerable species (together with endangered and critically endangered species and endangered and critically endangered ecological communities) are matters of national environmental significance, but vulnerable ecological communities, although they may be listed under the Act, are not.

The government considers this anomaly should be addressed and will amend the Act to include vulnerable ecological communities as a matter of national environmental significance. The government agrees that, should an ecological community warrant listing as vulnerable under the Act, appropriate protection measures should be put in place. At present, there is only one ecological community listed as vulnerable under the Act.

Recommendation 15

The Review recommends that 186(2)(b) of the Act be amended to require the Environment Minister, in deciding whether to list a threatened species or ecological community, to take the principles of ecologically sustainable development into account only in exceptional situations where social or economic costs associated with listing are overwhelming and the environmental benefits are known to be slight.

Government response: Not agreed

The Australian Government is committed to supporting the principles of ecologically sustainable development set out in the EPBC Act. The government considers that a strength of the Act is its clear framework for balancing environmental, economic and social considerations in decision making. Part of this clear framework is that the listing process for species and ecological communities is based on an independent and rigorous scientific assessment by the Threatened Species Scientific Committee. This assessment considers the conservation status of the species or ecological community, and the government supports its continuation in the amended Act.

If a species or ecological community is listed, economic and social impacts are then taken into account at a later stage in assessing any proposed actions that are assessed as having a significant environmental impact on a listed matter, and in deciding how to manage these environmental impacts.

Recommendation 16

The Review recommends that the Act be amended to give the Environment Minister the power to make emergency listings of threatened species and ecological communities, provided the Minister believes that:

1. *the native species or ecological community meets the criteria for the listing category for which it is nominated; and*
2. *a threat to the native species or ecological community is severe and imminent.*

Government response: Agreed in principle

The Australian Government agrees with the intent of this recommendation and will amend the Act to include an emergency listing process for threatened species and ecological communities. The government considers that the criteria on which the minister makes an emergency listing of a species or ecological community should be whether the native species or ecological community meets the listing category's criteria, and whether a threat is both likely and imminent and would result in a significant adverse impact. In contrast to 'severe', the 'significant' test is already central to the EPBC Act and will still achieve the intent of this recommendation.

The Act currently does not cover circumstances where there is the potential for immediate and significant threats to a species or ecological community that is not yet listed. While the Act allows the Threatened Species Scientific Committee to consider nominations additional to those put forward during the listing process, this does not provide emergency protection to respond to an imminent and significant adverse impact to a species or ecological community. A provision exists under the Act for emergency listing of heritage places and Ramsar wetlands. The new provision will operate in a similar way to these existing emergency listing provisions.

The government notes that the process and test for emergency listing must be stringent to avoid any misuse of process or vexatious claims. Consistent with other emergency listing procedures in the Act, the amendment will allow the minister to seek the advice of the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68) wherever feasible, and to consult with relevant state, territory and Australian Government agencies as appropriate.

Similar to the role the Australian Heritage Council takes in heritage listings, the proposed Biodiversity Scientific Advisory Committee will be required to do the usual full independent assessment of the species or ecological community within 12 months of the emergency listing occurring. This assessment will also include recommendation of an appropriate listing category for the species or ecological community in question.

Recommendation 17

The Review recommends that the provisions of Part 13 of the Act relating to migratory species listed on Appendix II of the Bonn Convention be reviewed and amended to allow the take of Appendix II migratory species, subject to management arrangements demonstrating that the take would not be detrimental to survival of the species.

Any such amendments should ensure that the Act provides appropriate protection consistent with Australia's international obligations.

Government response: Agreed

The Australian Government notes that the intent of the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), to which Australia is a Party, is to conserve migratory species. All migratory species listed on Appendix I should continue to be protected under the amended EPBC Act as a matter of national environmental significance. This category of protection will be renamed 'protected migratory species', under the amended Act. Migratory species listed on Appendix II of the Bonn Convention will no longer be automatically listed under the Act.

The government notes the intent of the Bonn Convention to differentiate between Appendix I and II listed species. Under the Convention, Appendix I species are categorised as endangered. Appendix II species are categorised as having an unfavourable conservation status and require international agreements for their conservation and management, or species with a conservation status that would significantly benefit from international cooperation.

The government notes that the Act currently does not differentiate between Appendix I and Appendix II species in its level of protection, and that the level of protection provided to Appendix II species may be higher than appropriate in some cases.

The government will amend the Act so that within 12 months of a Bonn Convention Appendix II listing coming into effect, the minister will consider the listing under the Act of any Appendix II species for which Australia is a range state. The consideration will include whether there are conservation programs, management plans, policies or other circumstances that ensure that the long term viability of the species is maintained or enhanced, and any take would not be inconsistent with any agreements concluded in accordance with the Bonn Convention. In doing this, the minister must seek the advice of the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68). The minister will then either:

1. list the species under the renamed category of 'protected migratory species' under the Act—that is, as a matter of national environmental significance, with take of the species prohibited under Part 13 of the Act;
2. list the species under a new category (which the amended Act will provide for) of 'managed migratory species', under which the species will not be a matter of national environmental significance. This category will allow for take of the species under approved management arrangements; or
3. decide that the species should not be listed.

Consistent with Australia's obligations under the Bonn Convention, the government will endeavour to conclude international agreements covering the conservation and management of migratory species included in Appendix II—for example, by initiating negotiations between range states on an agreement or memorandum of understanding for the species. The Act will allow for the level of domestic protection afforded under the EPBC Act to relevant Appendix II species to be reconsidered, either upon the conclusion of such international agreements, or if new information on the species' status becomes available.

The government will retain current levels of protection for Appendix I listed species. Where a species is listed on both Appendix I and II, the protection status of Appendix I would apply. These arrangements will not affect the protection afforded to species listed as threatened under the Act.

Recommendation 18

The Review recommends that the Act be amended to:

1. *allow greater flexibility in the development of recovery and threat abatement plans, particularly to allow for their development at regional scales; and*
2. *create opportunities for better linkages to funding initiatives.*

Government response: Agreed in part

Recommendation 18(1): Agreed

The Australian Government is of the view that recovery and threat abatement plans should be developed at ecologically relevant scales, and that the amended EPBC Act should provide enough flexibility to allow those plans to be in a form and of a duration most suited to the particular circumstances. Once the recovery or threat abatement needs are identified and issues of scale and efficiency considered, the most suitable content and design of the recovery or threat abatement plan can be chosen.

At the time of listing, under the current Act, a determination is made as to whether or not a recovery plan or threat abatement plan should be developed. The government will amend the Act to expand this determination to allow the minister to make a decision on the type of plan to be developed—for example, a single-species or multi-species recovery plan, a regional recovery plan, or a regional or national threat abatement plan. This decision could be taken at a later time if there were insufficient information at the time of listing.

The government recognises that the current legislative system provides enough flexibility to develop regional recovery plans, and notes that to date three such regional recovery plans have been adopted, with a further five being prepared.

The government notes that the Act only allows for nation-wide threat abatement plans, and agrees that the amended Act should allow for threat abatement plans to be developed at a regional level (see the response to Recommendation 19), and be integrated with recovery planning approaches.

Threat abatement and recovery plans should be consistent with, and complementary to, regional environment plans established under the amended Act (see response to Recommendation 6). Future recovery and threat abatement planning may be guided by regional environment plans, but may also occur independently if the species or ecological community concerned occurs in a geographic region where no such plan exists.

Recovery plans and threat abatement plans should not be required to be reviewed at fixed periods, but instead should be reviewed at appropriate times, as determined by the minister with the advice of the new Biodiversity Scientific Advisory Committee (see the response to Recommendation 68). The timing of reviews should be determined on a case-by-case basis, informed by ecologically relevant time frames, availability of new information, and significant changes to the status of the threatened species or ecological community or its key threats. There is further discussion of threat abatement planning in the responses to Recommendations 20 and 21.

Recommendation 18(2): Agreed in principle

The government notes the Review's finding (5.73) about prioritising resource allocation to recovery efforts for threatened species and ecological communities. The government is committed to developing better prioritisation processes and decision-making tools that increase transparency, accountability and efficiency.

Further, the government agrees that it is desirable to create opportunities for better linkages to funding initiatives. However the government does not agree this should be legislated. The government currently prioritises funding under the Caring for our Country initiative to support high-priority actions such as the recovery of nationally-listed threatened species and ecological communities, identified through a rigorous and targeted planning process. Funding of actions under recovery and threat abatement plans should continue to occur through these processes.

Recommendation 19

The Review recommends that the Act be amended to:

1. *better define key threatening processes (KTPs);*
2. *allow greater flexibility in the criteria for eligibility for listing a KTP; and*
3. *allow strategic identification of KTPs at a range of scales.*

Government response: Agreed

A threatening process is currently defined under the EPBC Act as a process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community. The listing of a key threatening process under the Act is the first step in developing and supporting efforts to reduce the impact of a particular environmental threat.

The Australian Government recognises that the existing definition and criteria relating to key threatening processes only relate to the protection of native species or ecological communities, and do not recognise key threats to other matters of national environmental significance. The government considers that current requirements are too restrictive, and the purpose of key threatening processes should be to identify both immediate and longer-term threats to Australia's national environmental assets more broadly.

The government therefore agrees to amend the Act to provide greater flexibility in the criteria to identify and list a key threatening process. Consistent with the conservation objects of the amended Act, the government agrees to redefine key threatening processes to include threats to other matters of national environmental significance. Further, the government will move towards strategic identification and prioritisation of key threatening processes at various scales, noting that a single key threatening process can affect multiple environmental assets.

Where the threatening processes relate to biodiversity they will be considered by the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68), and where they relate to non-biodiversity heritage issues they will be considered by the Australian Heritage Council. The relevant expert group will provide advice to the minister, in line with current practice.

The strategic identification of threatening processes will constitute an important part of the landscape-scale approaches agreed to in Recommendation 6. The government notes this is similar to the way in which threatening processes are already being identified in a strategic manner in the current marine bioregional planning process.

The outlook reports outlined in Recommendation 23 should also provide a policy context for strategic approaches to identify, prioritise and manage key threatening processes.

Recommendation 20

The Review recommends that the Act be amended to provide for greater flexibility in the development and implementation of Threat Abatement Plans and allow transition to regional planning approaches and strategic threat management.

Government response: Agreed

When a key threatening process is listed under the EPBC Act, the minister must decide whether to develop a threat abatement plan. These plans establish a national framework to guide and coordinate the Australian Government's response to key threatening processes listed under the Act. Under section 270A of the Act, a threat abatement plan is developed if the minister believes that implementing a threat abatement plan is a feasible, effective and efficient way to abate the threat.

The government will amend the Act to provide for greater flexibility in developing and implementing threat abatement plans. The government's responses to Recommendations 18, 19 and 21 also contribute to meeting this recommendation, by allowing greater flexibility in the criteria for eligibility for listing a key threatening process, and by increasing the available range of responses to a key threatening process listing.

The government recognises that the current legislation allows for both multi-species and regional recovery plans, but does not allow for regional threat abatement plans. The government supports the development and implementation of threat abatement plans in the context of regional environment planning approaches and strategic threat management. Regional threat abatement plans should be complementary to, and able to form part of, regional environment plans established under the amended Act, which will identify threatening processes in a similar way as in the current marine bioregional planning process. The outlook reports outlined in Recommendation 23 will be important in informing a strategic approach to prioritising and managing environmental threats, particularly at a regional scale.

In expanding the roles and situations in which threat abatement plans may apply, the government notes it is also important that they are not developed unnecessarily, particularly in situations where effective regulatory mechanisms or investment strategies are already in place to abate the threat. The government also considers that future threat abatement planning may be guided by regional environment plans, but may also occur independently of regional environment plans if it occurs in a geographic region where no such plan exists.

Recommendation 21

The Review recommends that the Act be amended to require the development of a 'threat abatement advice' at the time of listing a Key Threatening Process.

Government response: Agreed

The Australian Government agrees that having access to threat abatement advice at the time of listing a key threatening process will inform decision making and provide important and timely advice to affected parties. The government will amend the EPBC Act to require the development of a 'threat abatement advice' at the time of listing a key threatening process.

The government will develop general guidelines for threat abatement advice similar to those used for conservation advice on species listings. Science-based threat abatement advice will be developed by the proposed Biodiversity Scientific Advisory Committee (see Recommendation 68) for all identified key threatening processes (regardless of whether there is, or may be, a threat abatement plan). This will provide immediate guidance on threat abatement activities that can be done, and on whether a threat abatement plan should be developed. Threat abatement advice should also be updated when new information becomes available—for example, from the outlook reports as outlined in Recommendation 23.

As outlined in the response to Recommendation 20, the government recognises the important role threat abatement plans can play in responding to key threatening processes listed under the Act. However, the decision on whether to develop a threat abatement plan should continue to be one for the minister, based on whether it is the most feasible, effective and efficient way to abate the threat.

Recommendation 22

The Review recommends that the Act be amended to:

1. *move Part 8A of the EPBC Regulations, which regulate access to biological resources in Commonwealth areas, into the Act;*
2. *increase the penalty provisions for non-compliance with Part 8A;*
3. *require benefit sharing agreements to refer to 'equitable' sharing of benefits arising from the use of biological resources in Commonwealth areas; and*
4. *require informed consent where Indigenous knowledge is accessed or used for non-commercial purposes on Commonwealth land.*

Government response: Agreed

The Australian Government agrees with Recommendations 22(1) and 22(2). The government will amend the EPBC Act to move Part 8A of the EPBC Regulations into the Act and increase the penalty provisions for non-compliance with those provisions. Increased penalties will more effectively deter non-compliance with provisions relating to access to biological resources. This outcome will be most efficiently achieved, as recommended, by moving the access to biological resources provisions into the amended Act, and subjecting them to its streamlined compliance provisions.

The government agrees with Recommendation 22(3). The benefit-sharing requirements will be amended to mandate both 'fair and equitable' sharing of benefits. This approach is consistent with the objectives of the Convention on Biological Diversity and the *Nationally consistent approach for access to and the utilisation of Australia's native genetic and biochemical resources* (2002) (the Nationally Consistent Approach).

The government agrees with Recommendation 22(4). The government will amend the Act to require an applicant to obtain informed consent from the custodians of Indigenous knowledge before that knowledge is used in connection with accessing biological resources in Commonwealth areas. This obligation will be the same irrespective of whether the purpose for which the knowledge is accessed or used is commercial or non-commercial. Where the custodians of Indigenous knowledge are native title holders, informed consent of native title holders may be evidenced in a registered Indigenous land use agreement under the *Native Title Act 1993* (Cth). This approach is consistent with the object of the Act at section 3(1)(g): to 'promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge'.

Consistent with findings in the Report at paragraph 5.110, the government also agrees to include provisions in the amended Act to make clear the obligations on persons who 'receive and hold' biological resources from Commonwealth *ex situ* collections.

The government also agrees with the Report's finding at paragraph 5.114 that the Commonwealth's regulatory regime for access to biological resources will operate most effectively if it is consistent with similar regimes in state and territory jurisdictions. The government agrees to continue to apply the Nationally Consistent Approach in its own legislative and policy framework, and will encourage state and territory governments to implement this approach in their own jurisdictions.

Recommendation 23

The Review recommends that:

1. *the Council of Australian Governments (COAG) develop criteria and management protocols for the movement of potentially damaging exotic species between States and Territories, working towards a list of 'controlled' species for which cost-effective risk-mitigation measures may be implemented;*
2. *the Act be amended to require periodic preparation of mandatory 'outlook' reports that identify emerging threats to the environment and provide policy options to address emerging environmental issues; and*
3. *the Australian Government establish a Unit or Taskforce devoted to foresighting to identify and guide management responses to emerging threats.*

Government response: Agreed in part

The government agrees that the planned movement of exotic species between states and territories needs to be carefully managed to minimise the risk that they will become established in a way that presents a threat to the environment.

Therefore, the government agrees in principle to Recommendation 23(1), and will lead the consideration of this issue, including consultation with states and territories through intergovernmental process. The government notes that section 301A of the EPBC Act, which has not been used to date, already provides for the development of a list of exotic species that threaten or potentially threaten Australia's biodiversity by importation into Australia or between states and territories.

The government notes that concerns surrounding the movement of potentially damaging exotic species in Australia have been discussed in the former Natural Resource Management Ministerial Council (NRMMC) and the former Primary Industries Ministerial Council (PIMC). The draft Intergovernmental Agreement on Biosecurity (IGAB) addresses key aspects of the national biosecurity system, including arrangements for established pests. This agreement also includes several clauses related to interstate trade. These clauses state that jurisdictions may put in place biosecurity measures providing they achieve Australia's appropriate level of protection in line with Australia's international rights and obligations. The government notes that the PIMC and the NRMMC endorsed the draft IGAB in April 2010, and it is now being considered out-of-session by COAG.

While the draft IGAB does include clauses related to interstate trade, it does not include measures to develop criteria and management protocols for the movement of potentially damaging exotic species between states and territories. It also does not include a list of 'controlled' species for which cost-effective risk-mitigation measures may be put in place. The work that has been done by the NRMMC and PIMC on the draft IGAB therefore provides a basis for further consideration of criteria and management protocols that might apply through regulations developed under section 301A.

The government agrees with the intent of Recommendation 23(2), but notes there are already several existing reporting processes—both mandatory and discretionary—that identify broad emerging threats to the environment. These include state of the environment (SoE) reporting, the *Great Barrier Reef Outlook Report* and climate futures reports.

To avoid the proliferation of reports, the government considers that the 'outlook' reporting function that identifies emerging threats to the environment should be included as a mandatory element of state of the environment reports. The government notes that the *2011 State of the environment report* currently being developed will include sections providing environmental outlooks. The government will develop regulations to specify the form of future state of the environment reports to ensure that key content of the report, including the outlook aspect, will become mandatory. Under the current Act, a state of the environment report must be prepared every five years.

The government is already looking at how national environmental accounts (outlined in Recommendation 67) might be best developed and maintained in terms of institutional and technical arrangements to deliver environmental information. National environmental accounts will be investigated to support state of the environment information requirements including the outlook element. The government announced in the 2010–11 Budget that it will invest $18 million over four years (2010–11 to 2013–14) to establish a National Plan for Environmental Information to help monitor Australia's precious environmental assets into the future.

The government agrees with Recommendation 23(3) to establish a unit within the Commonwealth environment department, in consultation with related agencies, to have a foresighting function, including the development of policy options in response to the outlook reporting, as recommended in 23(2). An important function of the foresight unit will be to promote and help information sharing between different agencies, councils or committees dealing with emerging threats to the environment.

The government agrees with paragraphs 6.50 and 6.51 of the Report, including that the Gene Technology Regulator should continue to take into account identified environmental issues, both direct and indirect, in assessing potential risks to the environment from the release of genetically modified organisms consistent with the *Gene Technology Act 2000* (Cth).

Similarly, as discussed in paragraphs 6.53 and 6.54 of the Report, potential risks to the environment from other emerging technologies will continue to be regulated under the Act through its assessment of actions that will have, or are likely to have, a significant impact on a matter of national environmental significance.

Recommendation 24

1. *The Review recommends that the Australian Government, in consultation with the environment and planning consulting industry, develop an industry Code of Conduct for consultants supplying information for the purposes of the environmental impact assessment and approval regime under the Act.*
2. *The Australian Government must decide whether the Code will be enforced by:*
   - *(a) prescribing the code under the* Trade Practices Act 1974, *and allowing enforcement of breaches by the Australian Competition and Consumer Commission; or*
   - *(b) DEWHA, under a suite of new Code of Conduct audit and enforcement powers.*
3. *To complement the Code of Conduct, the Review recommends that the Environment Minister:*
   - *(a) audit the information in referral documentation and/or assessment information; and*
   - *(b) audit protected matters to test if the predictions made in Environmental Impact Assessments were correct.*

Government response: Agreed in part

The Australian Government recognises there is concern in the community about the quality and objectivity of information provided by some proponents in environmental impact assessment processes.

The government considers that the regulatory response proposed in Recommendations 24(1) and (2) is currently not warranted. It is government policy not to prescribe codes of conduct unless first, significant problems are long standing and demonstrated to exist in the relevant industry and secondly, other non-regulatory options (such as voluntary codes, or industry self-regulation) have been fully explored and demonstrated to be ineffective. There are currently only five statutory codes of conduct in Australia.

The government recognises that environmental industry-based certification schemes and voluntary codes already operate in Australia. An example of an industry-based certification scheme is the *Certified Environmental Practitioner Program*, which is an initiative of the Environment Institute of Australia and New Zealand, a professional body of environmental practitioners in Australasia. This program assesses environmental professionals in competency criteria of training, experience, professional conduct and ethical behaviour, and provides industry-wide accreditation.

The government agrees to Recommendation 24(3), noting that a statutory code of conduct does not need to be in place for auditing to be effective. Targeted auditing will help determine whether an information quality problem exists. The government proposes amending the Act to allow for auditing of:

1. the quality, accuracy and relevance of information in referral and assessment documentation; and
2. the environmental outcomes for protected matters to determine whether the predictions made during assessments were correct.

The government already evaluates information through existing provisions in the EPBC Act, including auditing of referral documentation and assessment information. This helps to ensure high quality information and best professional practices are used in preparing environmental assessment materials to be considered by decision makers. The government also notes that there are existing provisions of the Act that are designed to ensure the quality and accuracy of information provided to the Commonwealth in complying with the EPBC Act. An example is the offence for providing misleading information in order to obtain an approval or permit under section 489 of the Act.

In addition, the government notes that its acceptance of Recommendation 61 will establish a new audit power that will be used to evaluate the quality of information provided by proponents.

In prioritising its audit activity, the government will take into account the concerns of the community that gave rise to Recommendations 24(1) and (2). If future audits suggest there are information quality issues, the government will evaluate options to tackle these issues and develop an appropriate response.

The government also proposes to prioritise auditing of environmental outcomes for protected matters affected by actions approved under the Act. This auditing will be supported by cost-effective monitoring arrangements. The information from these audits will be used to help improve environmental decision making and approvals processes under the Act.

The government will develop guidelines on the publication of audit reports, consistent with confidentiality, privacy and procedural fairness requirements.

The government notes that the steps outlined to improve transparency and accountability of decision-making processes in Recommendations 44–46 will also help address community concerns, by allowing the community greater access to information on which decisions are based, and by improving community engagement during the consultation phases in environmental impact assessment processes.

Recommendation 25

The Review recommends that the Act be amended to confer power on the Environment Minister to weigh a wide range of environmental considerations when making an approval decision. There are three options for amendment:

If a project triggers the Act, the Minister:

1. *must consider the whole of the environment, that is, all environment matters the project impacts upon;*
2. *may call in the impacts on the whole of the environment for assessment, if it is considered that the action is of 'national importance'; or*
3. *may consider impacts on all protected matters affected by the project, including impacts that are not significant.*

Government response: Not agreed

The Australian Government disagrees with Recommendation 25 and the three options provided. In the government's view, none of the three options would improve protection for matters of national environmental significance.

The government considers that it can most effectively improve protection for matters of national environmental significance through increasing the use and effectiveness of strategic assessments and regional environment plans, and through reform of the environmental impact assessment process. These reforms will be achieved through implementation of the government's responses to other recommendations, particularly Recommendations 4, 6, 26 and 27.

State and territory governments are responsible for regulating for the environment generally, except for a limited number of circumstances in which the Commonwealth regulates for the whole of the environment, such as where actions are taken wholly within the Commonwealth marine environment.

The government remains committed to its current role, which is to protect matters of national environmental significance and other matters protected under the Act, as well as ongoing national leadership in environmental protection and conservation.

Recommendation 26

The Review recommends that the Act be amended to confer power on the Environment Minister to request information on alternatives for projects referred for approval under the Act.

Government response: Agreed

The Australian Government supports clarification of the federal environment minister's powers to request prudent and feasible alternatives to projects referred under the amended EPBC Act as part of the project assessment process.

The government notes that the minister has an existing power under the Act to require and consider alternatives, where he or she includes such a requirement in the environmental impact statement tailored guidelines. There is also an option for proponents to include alternatives to their proposed action in referral documentation. Under the 2010 amendments to the Regulations, proponents are required to include in referrals information about alternatives to the project where they have considered them. The minister may consider these alternative proposals when making a final approval decision. However, the current provisions for consideration of alternatives do not address the difficulties experienced by some proponents where they have significantly invested in a particular project design before engaging with the Act.

The government believes that early engagement and discussion of prudent and feasible alternatives will lead to the best possible results for the environment and for business certainty. Consideration of alternatives in the pre-referral stage provides this opportunity, and the government strongly encourages proponents to use this option.

In some situations, once the proposal is referred (particularly when there have been no pre-referral discussions), it is clear at an early stage first, that the action as proposed is likely to have potentially unacceptable environmental impacts and secondly that there may be prudent and feasible alternatives with a significantly lower impact on protected matters. At present, the minister's options are to reject the proposal as 'clearly unacceptable' or to allow assessment to proceed in the knowledge that his or her final decision may be not to approve the project, or to impose conditions that may be burdensome or even unacceptable to the proponent.

The government will amend the Act so that where the minister forms the view at the end of the referral stage that a proposed action may have a potentially unacceptable impact on a protected matter, he or she may require further information on alternatives to be provided (the minister will not nominate specific alternatives). Once this information has been provided, proponents may submit an amended referral. The minister would then consider this new information while retaining the capacity either to refuse to approve the taking of an action as 'clearly unacceptable' or determining it to be a 'controlled action' for assessment in the normal way.

By encouraging consideration of options at an early stage, this approach will maximise the prospect of a development proceeding in an environmentally acceptable way, and minimise the prospect of either a refusal or burdensome conditions of approval. The government will produce guidelines on prudent and feasible alternatives to ensure proponents will not be asked to consider alternatives that are not viable in the context of their business model. Proponents will also have the option (where relevant) to demonstrate at the referral stage that there are no prudent and feasible alternatives, or that the alternatives would be unlikely to reduce significantly the impacts on matters of national environmental significance in comparison to the proponent's preferred action.

This new approach to consideration of alternatives will not require a change to existing statutory decision-making timeframes.

Recommendation 27

The Review recommends that the operation of the environmental impact assessment (EIA) regime be clarified by:

1. *amending the Act –*
    - *(a) to ensure that the provisions governing project EIA are as efficient as possible while retaining transparency of decision-making;*
    - *(b) to allow the Minister to stipulate when actions will not have a significant impact;*
    - *(c) to allow consideration of previously authorised conditions of approval when a prior authorisation requires re-approval under the Act;*
    - *(d) to ensure that the controlled action decision remains strictly a jurisdiction question;*
    - *(e) to clarify the threshold for making a particular manner decision;*
    - *(f) to ensure that compliance and audit functions are available in respect of monitoring particular manner decisions; and*
    - *(g) to improve the capacity of the Minister to vary conditions attached to an approval decision made under the Act.*
2. *DEWHA developing –*
    - *(a) policy advice to help increase clarity in determining what would constitute a significant impact against each matter of national environmental significance, including particular threatened species and ecological communities;*
    - *(b) policy guidelines to ensure that where relevant, bio-regional plans provide context for the test of 'significant impact'; and*
    - *(c) guidelines on continuing use and prior authorisation.*

Government response: Agreed in substance

The Australian Government agrees with all elements of this recommendation except Recommendation 27(1)(g), as outlined below. Given the broad scope of this recommendation, the government's response is organised according to the stages of the environmental impact assessment process rather than the specific elements of the recommendation. Further, the government response includes reforms to the process beyond those proposed by the Report.

The government considers that the current elements of the project-based environmental impact assessment regime provide a sound method for achieving positive environmental outcomes, but substantial improvement is possible. The government agrees to amend the EPBC Act to streamline operation of the environmental impact assessment system, provide faster assessment processes in certain circumstances, improve the functioning of the system, and provide better results for the environment, community, business and the economy.

The government notes that the implementation of this recommendation will be complementary to that of Recommendations 4 and 6, whereby strategic assessments and regional planning will be used to better identify and manage impacts on protected matters.

Pre-referral

Engagement with proponents

The government recognises that early engagement with proponents—ideally during the site identification, scoping and project design phases—will provide proponents and government with flexibility to negotiate better environmental and regulatory outcomes in potentially shorter timeframes. This will include active engagement through pre-referral discussions, supported by clear guidelines and policy statements.

The government agrees with the Review's finding (paragraph 7.72) that the Commonwealth environment department should provide information to proponents about whether an action will have a significant impact, to the extent allowed by law. The government notes however that the environment department, and in particular the minister's delegate, should not provide advice that would pre-empt a statutory decision. This is to ensure that the outcome of the discussion does not give rise to a false belief that an action does not have to be referred, that it is not tainted by actual or apprehended bias, and that it does not give rise to a legitimate expectation for a particular outcome. However, there are many appropriate topics that the minister's department could discuss appropriately with proponents, including:

- prudent and feasible alternatives, including site selection and alternative project designs (see the government's response to Recommendation 26)
- guidelines and policy statements that are relevant to the proposed action (Recommendation 27(2))
- the operation and requirements of the legislation
- information that should be contained in a referral
- analogous actions that have undergone a referral decision.

The options for pre-referral discussions, and the issues that may be discussed, should be made publicly available through guidelines.

Identification of persons taking an action

The amended Act will provide clearer identification of parties taking the action that will or is likely to have a significant impact on a matter of national environmental significance. For example, as discussed in paragraph 6.56 of the Report, in the context of emerging technologies, the government will amend the Act so that a technology provider or distributor, while not physically taking the action, can be appropriately identified as the person taking the action rather than the end-user.

Policy statements and guidelines (Recommendation 27(2))

The government supports the continuing development of significance guidelines, as they provide support and clarity for proponents in deciding whether an action has had, is having, or is likely to have a significant impact on a matter of national environmental significance. The government has already produced two general significant impact statements, three sets of guidelines for specific industries, and 20 sets of guidelines that help quantify impacts on particular species, ecological communities or groups of species.

The government agrees to produce more guidelines and policy statements on different aspects of the operation of the amended Act, including:

- guidelines for what constitutes a significant impact for each matter of national environmental significance
- industry-specific guidelines on significant impact
- guidelines specific to species and ecological communities on significant impact, including considerations of habitat where appropriate
- guidelines for specific geographic areas outlining what would constitute a significant impact on a matter of national environmental significance in that region, areas suitable for development, and areas requiring protection; ideally these guidelines would follow the creation of a regional environment plan
- survey guidelines for each taxa and ecological community type listed under the Act
- guidelines on continuing use and prior authorisation
- guidelines on the application of the precautionary principle
- general guidelines for Ramsar wetlands, including the clarification of the definitions of 'wise use' and 'ecological character', and an explanation of 'appropriate activities'
- guidelines for audits
- guidelines for listed world heritage properties and listed national heritage places, which outline constraints and types of actions likely to have a significant impact
- guidelines for doing strategic assessments
- guidelines on what information is required in relation to the assessment of prudent and feasible alternatives (see government response to Recommendation 26)

The government agrees that all guidelines produced should be useable, clear and scientifically robust, and agrees to consult with the public, affected stakeholders and relevant experts when developing guidelines.

Significant impact determinations

The government agrees to Recommendation 27(1)(b) and will amend the Act to include a provision that will allow the minister to create binding determinations as to particular classes of actions that will or will not have a significant impact on matters of national environmental significance. These guidelines will be created as disallowable legislative instruments, and the minister will be required to consult other relevant ministers before tabling the instruments. These determinations will provide legal certainty for proponents about whether their project requires referral and assessment, by allowing them to do a self-assessment in accordance with the determination. The determinations will be periodically reviewed to ensure that the parameters correctly identify what impacts are significant.

Referral

Not a controlled action, particular manner decisions

The government notes that particular manner decisions are useful in encouraging proponents to provide well-considered proposals to the minister. The government will amend the particular manner provisions to improve their clarity of application and their enforceability (Recommendations 27(1)(e) and (f)).

Declaring that a project is not a controlled action provided it is taken in a particular manner should validly occur where the proposal clearly demonstrates that a project that would otherwise have a significant impact contains avoidance and mitigation measures that will reduce the impact to below a significant impact. This decision will only consider avoidance and mitigation measures, and not consider offsets. The government does not support the weighing of positive and negative impacts during the controlled action decision stage, as it 'short circuits' the assessment that would otherwise occur.

The penalty provisions associated with particular manner decisions apply to actions that are 'inconsistent' with the particular manner provisions. In practice, the requirement of 'inconsistency' has been difficult to prove and enforce, including in cases of clear breaches of particular manner requirements. The amended Act will clarify the meaning of this provision to reduce uncertainty and make more explicit the basis on which a person may be in breach. Specifically the measures described in particular manner notices will clearly and precisely describe, in the form of conditions, the measures to be taken to mitigate or avoid significant impacts on protected matters, so they are more easily auditable and enforceable.

Currently there is no power to vary the requirements of a particular manner decision. Proponents who are unable to meet the requirements of the particular manner decision must request a reconsideration of the entire decision. This is not timely or efficient. In the amended Act, the minister will have the capacity to vary requirements of particular manner decisions where he or she is satisfied the variation will not alter the significance of the impact of the action on protected matters.

Assessment

Assessment methods

As outlined in the government response to Recommendation 4, the government agrees to remove assessment by public environment report, and to establish joint state/territory and Commonwealth assessment panels.

The government also agrees to streamline the provisions governing environmental impact assessments to increase efficiency, while improving transparency of decision making (Recommendation 27(1)(a)) and ensuring that the controlled action decision remains strictly a jurisdictional question—that is, a question as to whether the amended Act is triggered by a particular action (Recommendation 27(1)(d)). Further, the government agrees with the Review's findings that the test of 'significant impact' should remain the threshold question

for the application of the project assessment and approval provisions of the amended Act (paragraph 7.64). The jurisdictional question of 'significant impact' should continue to consider only adverse environmental impacts—that is, project benefits and offsets will not be taken into account at this preliminary stage.

Assessment method decisions in the amended Act will include:

- accredited assessment
- approval on referral information
- assessment on preliminary documentation
- environmental impact statement
- public inquiry/joint assessment panels.

Assessments may also occur under an assessment bilateral agreement.

Approval on referral information

The government considers that where proponents have proactively committed to reduce environmental impacts on matters of national environmental significance to an acceptable level in the design and management of an action, this should be rewarded by faster assessment consideration without a reduction in public transparency. The government recognises there have been difficulties with the 'assessment on referral information' method, which was inserted during the 2006 amendments to provide for a fast and efficient assessment process for proponents who provided high-quality referral information. Assessment on referral information has had limited use due to its onerous requirements, its overly prescriptive preconditions and the unrealistic timeframes. The government will amend the Act so that 'assessment on referral information' is replaced with a new process 'approval on referral information'.

Creation of a new 'approval on referral information' through the amended Act will offer proponents a final approval decision in 35 business days for projects that meet specific criteria. The criteria will include:

- pre-referral requirements being completed with the Commonwealth environment department to ensure the referral is valid and meets the criteria before being accepted
- the impacts of the action being demonstrated with a high degree of certainty
- the impacts of the action being limited to a single matter of national environmental significance (that is, the action triggers only one controlling provision)
- the proponent has clearly documented all avoidance, mitigation, rehabilitation and compensation they will undertake to reduce the impacts of the action to an acceptable level in a manner which is transparent, auditable and the subject of an annual published performance report.

In addition to the standard practice of publishing the referral for public comment, the proposed approval conditions for the project will also be released. Public comment will be sought on both, with the period of public comment increased to give enough time for both to be considered together. Taking into account the comments received, the minister will then proceed with either:

- approving the action, or
- determining the action is a controlled action and that it will be assessed by one of the other methods of assessment available under the EPBC Act.

Post approval

Variations

The government notes there are circumstances where the approval conditions attached to a project must be varied, but it is important to provide certainty for proponents who have been granted an approval. The Act currently provides this balance by allowing variation of conditions in limited circumstances. The government does not agree to change the circumstances under which approval conditions may be varied, as is proposed in Recommendation 27(1)(g), and the relevant provisions in the Act will be retained. The government notes that it is unclear under the Act whether variations of conditions made before an action begins are legally valid. While the government does not recommend changes to the circumstances in which an approval may be varied, the amended Act will allow variations to approval conditions before the start of an action, as well as after an action has begun. This will be of particular benefit in providing certainty to proponents seeking to have their approval conditions varied before starting an action.

The government also notes there is a need for greater clarity about actions that have been approved or determined to be not a controlled action under the Act and that change in nature or scope after the decision has been made. The amended Act will provide greater certainty as to when a change to an approved action is so significant as to require a new assessment.

Recommendation 28

The Review recommends that:

1. *regulation of World, National and Commonwealth Heritage matters be retained in the Act; and*
2. *DEWHA develop a guide to the heritage provisions of the Act to assist those with specific interest in heritage matters in applying and understanding the relevant provisions.*

Government response: Agreed

The Australian Government agrees with Recommendation 28(1) that the existing regulation of World, National and Commonwealth Heritage matters is appropriately retained in the amended EPBC Act.

The government agrees with Recommendation 28(2), and notes that guidelines have been developed for several heritage-specific provisions in the EPBC Act. These will continue to be developed to become a comprehensive guide to the heritage provisions in the amended Act to enable stakeholders and potential proponents to better understand the relationships between provisions, and the steps necessary to achieve good heritage outcomes and compliance. An electronic version will also extract and collate the heritage-specific provisions.

Recommendation 29

The Review recommends that the Act be amended to:

1. *simplify the nomination, prioritisation, assessment and listing processes for National and Commonwealth Heritage; and*
2. *provide for greater transparency, which should be achieved by –*
    - *(a) the Australian Heritage Council (AHC) making strategic nominations and determining its work plan;*
    - *(b) producing guidelines on the documentation requirements for heritage nominations;*
    - *(c) notifying owners of places if a heritage nomination relating to that place is to be assessed;*
    - *(d) inviting public comments when places are added to the Priority Assessment List and when the potential heritage values of those places are identified; and*
    - *(e) publishing AHC advice and recommendations at the time of the Minister's listing decision.*

Government response: Agreed in part

The EPBC Act specifies the steps that must be taken at each stage in the National and Commonwealth Heritage nomination, prioritisation, assessment and listing processes.

The Australian Government agrees with Recommendation 29(1), and will amend the Act to:

- deliver a coordinated nomination process with a single priority assessment list, but retain the responsibility of the minister, in consultation with the Australian Heritage Council, to establish the assessment list
- enable the Australian Heritage Council to identify 'study areas', including areas being considered under regional environment planning or strategic assessment processes, for investigation before it defines the scope of the final assessment
- facilitate open discussion about possible heritage values identified by the Australian Heritage Council with property owners, occupiers and others who may be directly affected by a future listing.

The government will amend the Act to allow the serial listing of properties. The Act will also be amended to allow listing boundaries to be slightly changed in light of new information.

The government agrees in part with Recommendation 29(2)(a). The government fully supports measures aimed at improving transparency, but notes that amendment of the Act is unnecessary because the Australian Heritage Council can already make strategic nominations under section 324JB(3)(b).

The government considers that the minister, in consultation with the Australian Heritage Council, should continue to have final responsibility for determining the council's work plan. For that reason, the provisions regulating the development of the work plan do not require amendment.

The government will amend the Act to enable the annual final priority assessment list to include both new and continuing assessments, and to allow for changes to timeframes for existing assessments.

The government notes there may be cases where it would be undesirable to comply with the inflexible requirement to make an annual call for nominations—for example, if the Australian Heritage Council determines it already has a full workload. There may also be circumstances in which the minister would add a place to the council's assessment work plan outside the annual call for nominations. The government will amend the Act to specify these circumstances.

The government agrees with Recommendation 29(2)(b), and acknowledges that greater awareness of the listing and Australian Heritage Council processes will improve public understanding, and lead to greater accountability of the government's listing activities, as well as better outcomes. The government notes that the department published the *Guidelines for the assessment of places for the National Heritage List* in February 2009.

The government agrees in principle to Recommendation 29(2)(c), noting that in some cases it may be difficult to identify all owners before starting the assessment. The government will amend the Act to require owners, managers and occupiers of places included on the work plan to be notified that the relevant place has been included. The notice may be advertised in local newspapers where there are likely to be more than 50 owners and occupiers.

The government agrees with Recommendation 29(2)(d). As well as supporting open discussion with property owners and occupiers and others whose property rights may be directly affected by a future listing, the government notes that broader public consultation will better enable the Australian Heritage Council to make fully informed assessments. The government will amend the Act to provide public consultation on the inclusion of places in the priority assessment list and when potential values are identified.

The government agrees to Recommendation 29(2)(e), and notes that while the Australian Heritage Council's practice is to publish assessment advice and recommendations shortly after the minister's decision, that is not mandatory. The government will amend the Act to require the council's assessment documents to be published at the same time as the minister's decision.

The government accepts the related finding in paragraph 8.54 of the Report, that the transitional provisions should be revived so that eligible places can be included on the Commonwealth Heritage List without assessment, provided the minister is satisfied these places are eligible for listing. (Note: the Report erroneously refers to the 2006 provisions rather than the 2003 provisions.)

Commonwealth agencies are undertaking additional work in examining their assets to determine those places that may have Commonwealth heritage values. To reduce the duplication involved in the Australian Heritage Council also doing a full assessment, the government will amend the Act to provide for a streamlined process to include eligible places on the Commonwealth Heritage List.

Recommendation 30

The Review recommends that:

1. *the Australian Government provide greater leadership for heritage protection and management by engaging with the Australian Heritage Council and actively promoting a national approach to heritage; and*
2. *the Act should be amended to –*
    - *(a) clarify the requirements for Commonwealth agency heritage strategies;*
    - *(b) require airport environment strategies to include a heritage assessment against the Commonwealth heritage criteria; and*
    - *(c) institute comprehensive heritage protection in the 'designated areas' of the Australian Capital Territory.*

Government response: Agreed

The Australian Government agrees with Recommendation 30(1). The government will continue to work with the Australian Heritage Council and other relevant bodies to provide greater national leadership on heritage protection and management, and to actively promote a national approach to heritage.

The government agrees with Recommendation 30(2)(a), and recognises that the existing legislative requirements for Commonwealth agency heritage strategies are complex and resource intensive. Reform of these requirements is a key area where the Commonwealth can demonstrate leadership in protecting and managing its significant heritage estate. The government will amend the Commonwealth heritage strategies provisions in the EPBC Act to make Commonwealth agencies' obligations clearer and, consistent with Recommendations 31 and 32, to focus on delivering good heritage outcomes rather than prescriptive processes.

The government agrees with Recommendation 30(2)(b). Under the current legislative arrangements, lessees of Commonwealth airports are not required to prepare individual heritage strategies or assess the heritage values of these properties against the Commonwealth heritage criteria. The government will amend the Act to require Commonwealth airports lessees to include an assessment against the Commonwealth heritage criteria in each airport environment strategy. This response should be read in conjunction with the response to Recommendation 65.

The government agrees with Recommendation 30(2)(c). The government recognises the need to institute comprehensive heritage protection in the Australian Capital Territory for all designated areas under the planning control of the National Capital Authority, pursuant to the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). This will close a loophole by extending coverage to all heritage places within designated areas, where currently protection is only afforded to those places in a Commonwealth area. To address this problem, and achieve seamless heritage protection, all designated areas will be declared Commonwealth areas for the purposes of protection of the environment, as currently afforded under section 26 of the Act.

This approach is consistent with the recommendations of the 2008 report of the Joint Standing Committee on the National Capital and External Territories inquiry into the role of the National Capital Authority titled *The way forward*.

The government will also amend the Act to improve and simplify heritage protection arrangements for places on national land in the Australian Capital Territory that have been transferred or leased to entities other than Commonwealth agencies.

Recommendation 31

The Review recommends that the Act be amended to:

1. *recognise a range of management arrangements, including management plans, that are required to be outcome focussed; and*
2. *allow for flexible format and content requirements for management arrangements to provide for efficiency in planning and management without compromising good heritage outcomes.*

Government response: Agreed

The Australian Government agrees to Recommendation 31(1) that the amended EPBC Act include provisions to recognise a range of outcome-focused management arrangements.

The government also agrees to Recommendation 31(2), and notes that the existing requirements for heritage management plans in the Act are unnecessarily complex. For heritage places, the purpose of approving a management plan should be to ensure that heritage values are properly protected and managed. While the management plan requirements for listed heritage places are comprehensive, they are not currently flexible enough to meet these aims efficiently and cost-effectively. The government will amend the Act to provide greater flexibility in the way that the Commonwealth's required standards may be met to focus effort on delivering good heritage outcomes rather than on processes, and to reduce duplication of state and territory requirements.

A move to more flexible management arrangements will be consistent with contemporary international practice, reflected, for example, in the UNESCO *Operational guidelines for the implementation of the World Heritage Convention***.** These guidelines allow for considerable flexibility in choosing the appropriate management system and mechanisms protect particular World Heritage properties. Management arrangements should be allowed to vary according to different owner/manager circumstances, and to be tailored to the level of complexity of the place. For example, state and territory approved management plans or planning instruments, or agency environmental management systems may be appropriate tools to manage protected places. Provided they meet Commonwealth standards, they should be able to be accredited. Further detail on accreditation of management plans and arrangements is in the response to Recommendation 33(2).

Recommendation 32

The Review recommends that, as for heritage management plans, the Act and Regulations be amended so that:

1. *management plans focus on outcomes rather than content and processes;*
2. *the format, requirements and process for developing management plans is flexible - guidelines for the preparation of management plans should be revised to reflect this flexibility; and*
3. *a single management plan can satisfy numerous planning requirements.*

Government response: Agreed

The Australian Government agrees with Recommendations 32(1) and 32(2), and will amend the EPBC Act so that management plans focus on outcomes, and the format requirements and process for developing management plans are flexible. As noted in the response to Recommendation 31, a move to more flexible management arrangements will deliver better conservation outcomes, and is consistent with contemporary international practices.

The government agrees with Recommendation 32(3), and will amend the Act so that an appropriate management arrangement could satisfy a range of planning requirements, including those already required by state and territory governments, and those required under international conventions.

Recommendation 33

The Review recommends that the Act be amended to:

1. *require management plans to identify and provide guidance on what is likely to have a significant impact on areas protected by the Act; and*
2. *allow accreditation of management plans that meet the requirements of the Act and Regulations – accreditation would be subject to performance auditing.*

Government response: Agreed in part

The Australian Government regards effective management planning of protected areas as an important and proactive tool for protecting important places and heritage values.

The government has produced several 'significant impact' guidelines and other policy papers in specific subject areas to help owners, managers and proponents understand what may constitute a significant impact that will trigger the EPBC Act.

The government agrees in principle with Recommendation 33(1) that it would be beneficial to owners and managers to have place-specific guidance on impacts embedded in management arrangements, including guidance on likely significant impacts on the values or ecological character of protected areas. However, it is not always possible to provide comprehensive guidance on significant impacts at a particular point in time. For example, studies may be required before such guidance can be used. The government will therefore amend the Act to provide that management plans should contain guidance on what constitutes a significant impact, but that the minister can decide that this requirement not apply where satisfied that further time is required to obtain the necessary information. The Act will allow management plans to be amended to include guidance at a later stage.

The government agrees with Recommendation 33(2). Accreditation of management plans and management arrangements is currently available through the bilateral agreement provisions of the Act. The government will revise these provisions to allow for accreditation for any management arrangements (not just through the bilateral agreement provision), along with impact guidance, to streamline and provide greater certainty to owners/managers and proponents. The accreditation requirements will be consistent with the principles set out in the response to Recommendation 4.

Recommendation 34

The Review recommends that the Act be amended to:

1. *enable the Environment Minister to initiate preparation of management plans for World Heritage properties, National Heritage Places and Ramsar wetlands where the collaborative processes have not produced effective plans; and*
2. *require the Minister to consult with the owner and/or manager of the protected area when preparing these plans.*

Government response: Not agreed

The Australian Government does not agree with Recommendation 34. Australia's international obligations for World Heritage and Ramsar sites require it to promote the conservation of those assets. The Commonwealth will continue to meet its obligations under the EPBC Act to use its 'best endeavours' to ensure management plans are prepared and implemented for World Heritage properties, National Heritage places and Ramsar wetlands, and will work cooperatively with the managers of these sites (principally states and territories) in doing so.

Nevertheless, the government is concerned by the Report finding that management plans initiated by states and territories are often inadequate or absent. The government will use non-legislative means, including the withholding of grant funding if necessary, to encourage site managers to prepare comprehensive plans that meet the requirements of the Act.

Recommendation 35

The review recommends that the Act be amended to streamline and rationalise the provisions governing management plans and permitting activities in Commonwealth reserves so that the provisions apply to both terrestrial and marine reserves.

Government response: Agreed

The Australian Government agrees with Recommendation 35. The provisions of the amended Act relating to Commonwealth reserves should be appropriate for both terrestrial and marine reserves and protected areas.

The government will amend the EPBC Act to update the existing provisions into a more cohesive regulatory framework that applies consistent and best-practice regulation to all Commonwealth reserves, marine and terrestrial.

Recommendation 36

The Review recommends that the Act and Regulations be reviewed and amended to ensure that biodiversity in conservation zones is adequately protected while the conservation zones are being assessed for inclusion in a Commonwealth reserve.

Government response: Not agreed

The Australian Government has reviewed the level of protection provided by the EPBC Act for biodiversity in conservation zones while these areas are being assessed for inclusion in a Commonwealth reserve.

Because conservation zones on land fall within the definition of 'Commonwealth land' for the purposes of section 26 of the Act, and those in Commonwealth waters form part of the Commonwealth marine area for the purposes of section 24, any action likely to have a significant impact on a conservation zone must be referred for assessment under the Act. A proposed mine, for example, is likely to require referral.

In addition, there is considerable scope to make regulations under section 390E to regulate activities in conservation zones to protect biodiversity, natural features or heritage.

The government regards these current provisions as adequate for their intended purpose, but will keep the current regulations under review to ensure the purpose is being adequately met.

Recommendation 37

The Review recommends that the Act be amended to repeal the biosphere reserve provisions, recognising that the Man and the Biosphere Program does not depend on domestic legislation.

Government response: Agreed

The Australian Government accepts this recommendation in the interest of reducing duplication of management planning arrangements.

Biosphere reserves are internationally recognised under the Man and the Biosphere Programme of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Each biosphere reserve conserves examples of characteristic ecosystems, managed for objectives such as protection, study and sustainable production.

The core areas of Australia's 14 biosphere reserves are already protected as they form part of either: a declared Ramsar wetland (Wetlands of International Importance); a declared World Heritage property; or National Heritage place (all of which are protected under the EPBC Act), or they are protected as conservation areas by state and territory legislation. As such, the provisions within the Act that establish a framework for developing and implementing management plans for these areas are unnecessary, as they are duplicative.

Removing these provisions will not undermine the operation of the Man and the Biosphere Programme in Australia.

Recommendation 38

The Review recommends that the current mechanisms contained in the Act for Regional Forest Agreement (RFA) forest management be retained, but be subject to rigorous independent performance auditing, reporting and sanctions for serious non-compliance.

The Commonwealth and States should agree on sustainability indicators by the end of 2010. Subject to the concurrence of the Environment Minister, these indicators would provide a basis for performance auditing.

The RFA reviews undertaken by the Commonwealth Forestry Minister (Forestry Minister) and the relevant State party, in consultation with the Environment Minister, should be expanded to focus on the performance of RFAs in meeting their agreed outcomes, including protecting biodiversity and continuous improvement of a State's Ecologically Sustainable Forest Management (ESFM) framework.

The Act should be amended so that the Environment Minister may apply the full protections of the Act, if, after consulting with the Forestry Minister, the Environment Minister is satisfied that the review:

1. *has not occurred within the timeframe specified in the RFA;*
2. *indicates serious non-performance, including –*
    - *(a) failure to implement and maintain forestry codes of practice;*
    - *(b) failure to commit to and implement recovery plans for listed threatened species in RFA areas;*
    - *(c) failure to establish management plans for Comprehensive, Adequate and Representative (CAR) reserves;*
    - *(d) failure of the ESFM framework to protect species;*
    - *(e) failure to investigate alleged breaches of the RFA and correct any proven breaches; or*
    - *(f) the audit outcomes are not implemented to agreed standards; or*
3. *does not provide enough information to judge if there are serious non-performance issues.*

The Review notes that a number of RFA reviews are outstanding and recommends a transitional period for the conduct of these reviews. Section 38 will continue to apply to RFA forestry operations if the Environment Minister certifies that the review process has been satisfactorily conducted within two years of the commencement of the amendments.

Government response: Agreed in part

The Australian Government notes the concerns raised about the operation of regional forest agreements (RFAs) in both the Review and the senate inquiry into the operation of the EPBC Act.

The government remains committed to RFAs as an appropriate mechanism for effective environmental protection, forest management and forest industry practices in regions covered by RFAs. The government is also committed to working with state governments to improve the review, audit and monitoring arrangements for RFAs, including their timely completion, and to clearer assessment of performance against environmental and sustainable forestry outcomes.

These improvements will be addressed in the renewal process to be negotiated with regional forest agreement states during 2011 and 2012. The first RFAs to be addressed under the renewal framework will be the 15-year reviews of the East Gippsland Regional Forest Agreement and the Tasmanian Regional Forest Agreement.

These improvements will inform the consideration of RFA renewal processes. The government does not agree to the recommendation to change section 38 of the Act, as the existing mechanisms for continuous improvement contained with the RFAs can be used to achieve ecologically sustainable forestry outcomes.

Recommendation 39

The Review recommends that the Australian Government work with the States to:

1. *improve the independence of compliance monitoring; and*
2. *develop processes to make publicly available information about the number and nature of complaints about Regional Forest Agreement operations and the results of any investigations.*

Government response: Agreed

The Australian Government remains committed to regional forest agreements, to working with state and territory governments to improve the independence and transparency of compliance monitoring, and also to making information publicly available on complaints received and actions taken.

Recommendation 40

The Review recommends that the Act be amended so that the fishery provisions under Parts 10, 13 and 13A are streamlined into a single strategic assessment framework for Commonwealth and State and Territory-managed fisheries to deliver a single assessment and approval process.

Government response: Agreed in principle

The government agrees with the intent of this recommendation, but notes that the fisheries assessment provisions under the EPBC Act serve different functions—for example, ecological communities and listed migratory species in a Commonwealth area (Part 13), strategically assessing impacts on matters of national environmental significance (Part 10), and ecologically sustainable management of commercial export fisheries (Part 13A).

The revised Australian Government *Guidelines for the ecologically sustainable management of fisheries (2nd edition)*, published in 2007, were designed to streamline fishery assessment processes and reporting requirements under the Act. The government notes that the guidelines help reduce administrative processes, but there remains overlap within the fishery assessment provisions of the Act.

Streamlining these requirements into a single strategic assessment framework would be consistent with the increasing focus on strategic approaches to environmental management as outlined in the response to Recommendation 1(3). The government supports reducing the administrative and regulatory process involved in fishery assessments, including through less frequent assessments of well-managed fisheries.

In streamlining these provisions, it will be essential to preserve the above functions. In doing this, the government recognises that any legislative changes will need to be consistent with the extent of Commonwealth constitutional power, as well as with Australia's Offshore Constitutional Settlement on provisions governing fisheries operating in Commonwealth or state/territory waters.

Consistent with Recommendations 4 and 6, the government supports in principle a progressive shift under the amended Act from individual assessments of fisheries to accreditation of fisheries management arrangements. The government will ensure that the amended Act provides the appropriate legislative capabilities for this to occur.

Recommendation 41

The Review recommends that the Australian Government:

1. *integrate the Commonwealth Fisheries Harvest Strategy Policy (HSP) framework with the threatened species listing process for marine fish; and*
2. *ensure the HSP biological reference points reflect the biology of the species and its role in ecosystem function rather than standard default settings such as reduction of population.*

Government response: Agreed in principle

The Australian Government released the Commonwealth Fisheries Harvest Strategy Policy (HSP) and Guidelines for Implementation of the Commonwealth Fisheries Harvest Strategy Policy in 2007. The HSP provides a framework that allows a more strategic, science-based approach to setting total allowable catch levels in all Commonwealth fisheries on a fishery-by-fishery basis. The implementation guidelines provide practical advice on how to interpret and apply the HSP to Australia's fisheries, and contain details of the science behind the fisheries' management decisions.

In relation to Recommendation 41(1) the government agrees that there should be a link between the HSP framework and the threatened species listing process for marine fish. The government considers that this link should remain a policy matter and not be legislative.

The government notes that this link is already explicit in both the HSP and the Threatened Species Scientific Committee's public interpretive guidelines, which were updated in 2010 to explain how the HSP is used during the listing process for commercially harvested fish species.

The government agrees in principle with Recommendation 41(2), and notes that the HSP encourages applying individually-tailored reference points that reflect the biology of the species and its role in ecosystem function. The HSP also encourages the use, as appropriate, of proxies other than a default level of biomass reduction.

The HSP directs that biomass limit reference points, or proxies, be set at levels that avoid unacceptable risks to the stock. It also requires that harvest strategies consider ecosystem interactions, and identifies one such consideration as the relationships the species has with other species in the food web or community, particularly if the harvested species is a keystone species. In such circumstances reference points may be increased to take account of species' importance to maintaining the food web or community.

The government recognises the difficulties associated with setting for all species robust stock-specific reference points that reflect the biology of a species and its role in ecosystem function. While the current default biomass limit reference point is intended to be precautionary to account for a lack of information and uncertainty, the government considers that application of the HSP should continue to work towards ensuring that biological reference points are appropriate to the biology of the species in order for the species to maintain healthy populations and maintain its resilience and ecological function, rather than universally applying standard default settings. The government considers there would be value in giving more

emphasis to implementation of this aspect of the policy, including by developing some general guidelines of this nature. This matter will be considered during the upcoming review of the HSP, scheduled for 2012.

The HSP focuses specifically on key commercial species. It emphasises that harvest strategies form only one part of a more comprehensive approach to ecosystem-based fisheries management, and will not alone achieve sustainable fisheries. The government notes the ecological risk assessment process for Commonwealth commercial fisheries identifies risks to the broad array of target and non-target species and ecosystems affected by commercial fishing, recommending a more conservative approach to fishery managers where limited data are available. The current marine bioregional planning process, which looks at the role of species in the ecosystem, will help improve the information base on species' ecological function.

An increase in focus on resilience and ecological function is not limited to fish species, but is part of the government's broader move to whole-of-ecosystem management in the conservation of Australia's biodiversity.

Recommendation 42

The Review recommends that the wildlife trade provisions in the Act be amended to:

1. *remove duplication between the objects of Part 13A and the objects and subsequent provisions recommended by the* Review for the Australian Environment Act;
2. *shift focus from the individual permitting system to assessment and accreditation of management arrangements for whole sectors, complemented by appropriate record keeping and monitoring activities – an accredited operation would be permitted to export without the need for permits (excluding specimens listed on CITES); and*
3. *streamline the different categories of approved sources for trading wildlife and wildlife products.*

Government response: Agreed

The Australian Government accepts Recommendation 42(1), and will remove duplication between the objects of Part 13A, and the objects and provisions in the amended EPBC Act.

The government also agrees with the finding at paragraph 12.33 of the Report that the amended Act should continue to provide for the humane treatment of wildlife during international shipment of specimens under the Act. The government considers that the current animal welfare objects of Part 13A should continue to apply to the import and export of wildlife, and the approvals of harvesting operations or other related approvals. The government notes that state and territory governments, not the Australian Government, are responsible for administering animal welfare legislation in Australia.

The government accepts Recommendation 42(2), and will consult with stakeholders to develop administrative procedures and legislative amendments to progressively shift the focus of international wildlife trade provisions from the individual permitting system, to assessing and accrediting management arrangements for companies and/or industry sectors.

The government notes that, in accordance with Australia's international obligations, specimens protected under the Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES) may only be imported or exported pursuant to a permit.

With respect to Recommendation 42(3), the government agrees to consolidate the different categories of sources of wildlife and wildlife products that can be approved for international trade, subject to meeting requirements under Australia's international obligations, including CITES. This work will be integrated with the shift towards accrediting management arrangements for companies and/or industry sectors. These reforms will be consistent with the streamlining of fishery assessment provisions, outlined in Recommendation 40.

The tests of sustainability and non-detriment to species will be retained as key criteria for determining an approved source.

The government notes the proposals made in the Report to streamline the live import risk assessment process under the Act (see paragraphs 12.14, 12.16 and 12.18), and agrees to streamline this process in drafting amendments to the Act.

Any changes to the live import risk assessment process will need to be consistent with Australia's international trade obligations, including under the World Trade Organization.

The government also notes the Report's finding (see paragraph 12.42) that the Act's prohibition on importation of CITES Appendix I animals for exhibition purposes is stricter than CITES requirements. The government will review this policy to determine whether it delivers conservation benefits.

Recommendation 43

The Review recommends that the Act be amended to prescribe mandatory criteria that must be considered when making decisions under the Act, which should include:

1. *a requirement that the Minister have regard to the best available information sufficient for making that decision;*
2. *where appropriate, the decision must be consistent with –*
    - *(a) the principles of ecologically sustainable development;*
    - *(b) Australia's obligations under relevant international agreements;*
    - *(c) management principles prescribed under the Regulations; and*
    - *(d) a plan prepared under the Act; and*
3. *a requirement that the Minister should consider, where relevant –*
    - *(a) the ability of the protected matter to respond to current and emerging threats and the reasonably foreseeable impacts of the decision on that ability; and*
    - *(b) the level of uncertainty in scientific information provided.*

Government response: Agreed in principle

The government agrees with this recommendation to the extent that decision making processes should be rigorous, transparent and based on best available evidence. The government has agreed in the response to Recommendation 44 to implement measures to increase public participation and transparency of processes under the EPBC Act.

The government agrees in principle with Recommendation 43(1), and notes that it is already a requirement under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) that a decision maker give proper consideration to all relevant facts or issues, and ignore any irrelevant considerations. This includes a requirement that when a decision involves a finding of fact there must be sufficient evidence upon which that finding of fact may be reasonably based. These principles are well established in administrative law and there is no need to amend the Act to include these requirements.

In regard to Recommendation 43(2) the government notes that mandatory decision making criteria are already established in the Act through the principles of ecologically sustainable development, which form the basis for all decisions under the Act.

The principles of ecologically sustainable development are based on principles 3, 4, 8, 11, 15 and 16 of the *Rio Declaration on Environment and Development (1992)*. As noted in the response to Recommendation 2, the government does not propose any change to current decision making criteria, as extensive decision making practice under the Act and legal interpretations of that practice have developed over the past decade in line with Australia's international obligations.

The government accepts in principle Recommendation 43(3)(a), and notes its relevance to creating outlook reports that identify emerging threats to the environment, as outlined in the government response to Recommendation 23.

The government agrees in principle to Recommendation 43(3)(b), and supports the ongoing application of the precautionary principle in decisions made under the Act, because it is an operational principle about taking decisions where there is a lack of full scientific certainty. However, the government accepts that the precautionary principle could be more consistently applied if better guidance were provided to decision makers on applying and using the precautionary principle. As noted in the government response to Recommendation 27, the government will create guidelines on applying and using the precautionary principle. These guidelines will be developed consistent with the government's existing international commitments on the precautionary principle. As outlined in the response to Recommendation 67, the government is currently examining how national environmental accounts are best developed and maintained. The National Plan for Environmental Information will form the foundations for national environmental accounts by establishing the institutional arrangements, priority-setting mechanisms, standards and infrastructure to deliver coordinated national environmental information.

Recommendation 44

The Review recommends that in order to increase public participation and transparency of processes under the Act, that it be amended to:

1. *require publication of a greater range of information, including but not limited to the following –*
    - *(a) advice provided to the Environment Minister by the Threatened Species Scientific Committee for consideration in making a listing decision under the Act – to be released at the time of the Minister's decision;*
    - *(b) advice provided to the Minister by the Australian Heritage Council for consideration in making a listing decision under the Act – to be released at the time of the Minister's decision;*
    - *(c) statements of reasons for all decisions made by the Minister and delegates under the Act – to be released at the time of the decision;*
    - *(d) reports and outcomes from audits undertaken under the Act;*
    - *(e) expert reports considered by the Minister or a delegate when making decisions under the Act – to be released at the time of the decision, or when provided to the proponent;*
    - *(f) all additional information requested from proponents to support decision making under the Act;*
    - *(g) environmental management plans made in accordance with an approval under the Act; and*
    - *(h) all submissions received in accordance with the Act;*
2. *ensure that, to the extent it is technologically feasible, all documentation and information required to be published is made available in electronic form; and*
3. *remove the requirement on proponents under ss.95B(4), 99(4) and 104(4) to republish documentation where public comments have not been received and the proponent has advised that no amendment to the original documentation is required, and replace it with a requirement that DEWHA publish a notice on its website stating that no comments were received and no changes are required to be made to the original documentation.*

Government response: Agreed in part

The Australian Government notes that a significant amount of material is already made publicly available by the Commonwealth environment department and advisory bodies established under the EPBC Act, and supports further steps to improve public accountability and transparency of decision making under the Act. The government agrees with Recommendations 44 (1)(a), (1)(b), (1)(d), 1(e), (1)(f), (1)(g), (2) and (3).

The government notes that the Threatened Species Scientific Committee and Australian Heritage Council already publish significant information, and agrees to legislate to make this practice mandatory, as recommended in Recommendations (1)(a) and (1)(b).

The government agrees that the amended Act should require publication of:

- reports and outcomes from audits done under the amended Act, as outlined in Recommendation 44(1)(d)
- all expert reports considered by the minister or a delegate in decision making under the Act, as outlined in Recommendation 44(1)(e), subject to appropriate privacy and confidentiality safeguards for certain matters, such as national security and secret traditional knowledge
- all additional information requested from proponents to support decision making under the amended Act, as outlined in Recommendation 44(1)(f)
- plans made in accordance with an approval under Part 9 of the Act, building on the intention of Recommendation 44(1)(g).

To ensure the protection of confidential information, the government will include in the Act a mechanism under which proponents can request that certain information or documents are kept confidential. In these instances proponents will be asked to provide a redacted or summary document for publication.

The government agrees in principle with Recommendation 44(1)(h), but notes that comments may be of a 'campaign' nature, where exactly the same or very similar comments are made by a large number of people, often by way of printed cards. The government also notes that many comments made under the Act are made to proponents and not the government. The government will amend the Act to require proponents to publish all comments made to them as part of the statutory assessment process except for campaign letters (which must be summarised), or those subject to privacy or confidentiality requirements. Subject to the same qualifications, the government will be required to publish all comments and submissions made to it by any person under the amended Act, subject to appropriate privacy and confidentiality safeguards. The government notes that public input is sought in several other processes under the amended Act, such as under the listings processes for threatened species and communities, and for applications to amend the live import list. The government's publication policy will relate only to comments received under a provision of the Act, not to other general representations or comments made related to matters being considered under the Act, unless these are specifically considered by the minister in decision making. The government will also amend the Act to standardise the circumstances in which documents would be exempt from publication requirements across the Act (for example, confidentiality).

The government agrees in principle with Recommendation 44(1)(c). Statements of reasons can be complex legal documents and are resource intensive to prepare. Requiring a statement of reasons for every decision under the amended Act, including those that are not controversial or are of an administrative nature, would unduly divert resources for little public benefit.
The government supports providing the public with clear and accessible explanations for all significant decisions taken under the amended Act in a resource-efficient manner. As such, in addition to information already published about many decisions under the amended Act, the government will require the following information to be published under the amended Act:

- for decisions to approve or not approve a proposed action that has been assessed under the Act or for decisions to endorse a plan, policy or program that has been the subject of a strategic assessment: the recommendation report from the Commonwealth environment department
- for a decision to list, or not list, a threatened species or ecological community: the advice of the Biodiversity Scientific Advice Committee
- for a decision to include a place on the National or Commonwealth Heritage List: the advice of the Australian Heritage Council
- for fisheries assessment decisions made by the minister in relation to approving export accreditations: the report of the Commonwealth environment department
- for live import decisions made by the minister in relation to amending the live import list: the report of the Commonwealth environment department.

The advice, reports and recommendation reports will not constitute a statement of reasons for the purpose of litigation. People considering a legal challenge to a decision under the amended Act will still be able to make an application for a more comprehensive statement of reasons for any decision taken under the amended Act in accordance with the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Similarly, those who are entitled to seek merits review of a decision may apply for a statement of reasons under the *Administrative Appeals Tribunal Act 1975* (Cth).

The government also agrees with the finding in paragraph 19.15 of the Report. This paragraph recommends that the annual ecologically sustainable development reporting requirements for Australian Government agencies, authorities and companies in s.516A of the EPBC Act be retained, but be amended to allow the minister to specify the requirements for this reporting in regulations under the amended Act. The government agrees that providing further guidance in the regulations will improve the quality of reporting by Australian Government bodies, and the community's understanding of efforts across Commonwealth operations to contribute to improved sustainability.

Recommendation 45

The Review recommends that public participation under the Act be improved by:

1. *the Act being amended to –*
    - *(a) clarify periods and processes for public participation under bio-regional assessments;*
    - *(b) give the Minister the discretion to seek and consider public comment on environmental management plans;*
    - *(c) ensure no public consultation process can be shorter than 11 business days; and*
    - *(d) define 'business day' to exclude any day from 24 December to 1 January (inclusive);*
2. *DEWHA –*
    - *(a) developing principles and guidelines for best practice public consultation; and*
    - *(b) strengthening involvement of Indigenous peoples in the workings of the Act by:*
        - (i) *developing guidelines based on reciprocal responsibilities;*
        - (ii) *working through established representative bodies such as Land Councils; and*
        - (iii) *strengthening processes for early engagement with Indigenous groups in strategic assessment and regional planning.*

Government response: Agreed in part

The Australian Government recognises the importance of an environmental decision-making framework that provides for effective community engagement, and accepts this aspect of the recommendation.

The government agrees to part 1(a) of this recommendation on bioregional assessments, and notes that these assessments will be known as regional environment plans. Minimum standards for public consultation to be undertaken when developing regional environment plans will be set out under the amended EPBC Act, in line with part 1(a) of this recommendation. However, given the diversity in what will be covered by regional environment plans, the best way to engage with the relevant stakeholders will differ from plan to plan. As such, the amended Act will give the minister flexibility to specify how public consultation will occur, provided the minimum standards are met.

The government also agrees with Recommendation 45(1)(b), and the amended Act will give the minister discretion, on the basis of specified criteria, to seek and consider public comment on draft environmental management plans prepared in accordance with the conditions of an approval under Part 9 of the Act, where satisfied that this is in the public interest.

The government agrees with Recommendations 45(1)(c) and (d), recognising the importance of establishing processes that support effective public consultation under the Act, and will amend the Act to ensure no public consultation period can be shorter than 11 days and to define 'business day' to exclude any day from 24 December to 1 January (inclusive). However, the minimum period of public consultation under Part 13A (Section 303GB) of five days for issuing 'exceptional circumstances' permits to export or import wildlife specimens should be retained. This is to ensure that timely decisions for this type of permits can still be made.

The government agrees with Recommendation 45(2)(a). The guidelines for best practice public consultation will outline practices for consultation with affected stakeholder groups and the community at large.

In regard to Recommendation 45(2)(b) the government notes that the Indigenous Advisory Committee and the Threatened Species Scientific Committee are currently developing Indigenous engagement and consultation protocols. These protocols will improve Indigenous engagement in the development and implementation of recovery and threat abatement plans. The government will continue to work through relevant Indigenous organisations in undertaking its work, including through established representative bodies where these exist and will work to strengthen processes for early engagement with Indigenous groups in strategic assessments and regional environmental planning.

The government will also draw on best practice handbooks on working with Indigenous communities, including the *Leading practice sustainable development program for the mining industry* which was released by the Department of Resources, Energy and Tourism in 2006.

Recommendation 46

The Review recommends that in order to improve transparency under the Act:

1. *the Act be amended to require establishment of a user friendly and cost effective system of email alerts, which interested parties can subscribe to, to receive information about the Act and processes under the Act;*
2. *the Australian Government consider the merits of including a requirement that DEWHA report against a set of key performance indicators for public awareness of the Act and effective engagement in the processes under the Act, as part of the Department's annual reporting obligations under the Act; and*
3. *that DEWHA –*
    - *(a) improve and maintain its website to enhance accessibility to information;*
    - *(b) focus on increasing its specialist industry knowledge to ensure effective engagement with stakeholders through a range of mediums; and*
    - *(c) implement a comprehensive communications campaign featuring the Environment Minister, to promote awareness and understanding of reforms undertaken in response to this Review.*

Government response: Agreed in principle

The Australian Government recognises that effective use of technology can significantly improve the community's capacity for timely and informed engagement in environmental decision making, but does not believe legislative amendments are required to achieve this.

The government recognises that increased awareness and understanding by industry of processes and decision making under the EPBC Act, including through improved access to information and guidance, can help:

- reduce the regulatory burden on industry to comply with its obligations under the Act
- increase compliance with the Act, and the achievement of the Act's objectives.

As technology is changing constantly, the administrative arrangements to give effect to the intent of Recommendation 46(1) need to be flexible, allowing for new communications technologies.

In regard to Recommendation 46(2), the government has considered the merits of including a requirement that the department administering the Act report against key performance indicators for public awareness and effective engagement in the processes of the Act. While legislating this is unnecessary, the annual reporting guidelines for the Commonwealth environment department will be amended to include this requirement.

The government agrees with Recommendation 46(3), and will:

- improve accessibility of information about the Act on the department's website
- work to increase the department's specialist industry expertise, and effective engagement with stakeholders.

The reform package that will follow from this review process will involve amendments to the current Act. To ensure these reforms deliver the maximum environmental, economic and social benefit, the reforms will be supported by a targeted communications package.

Recommendation 47

The Review recommends that the Act be amended to require that requests for reconsideration of a controlled action decision be required to be made within 11 business days of the decision, unless the request for reconsideration is based on substantial new information or a substantial change in circumstances not foreseen at the time the first controlled action decision was made, and this new information or change of circumstances relates to the likely impact that the action has, will have or is likely to have on a protected matter.

Government response: Agreed in part

The EPBC Act currently contains provisions for two types of requests for reconsideration of controlled action decisions: for state or territory ministers; and for persons other than state or territory ministers. The two sets of provisions have different requirements—requests for reconsiderations from state and territory ministers must be made within 10 business days of notification of a controlled action decision, but there is no time limit on requests by persons other than state or territory ministers.

The Australian Government will amend the Act to extend the time period from 10 business days to 11 business days for requests for reconsiderations by state or territory ministers where the request does not relate to substantial new information or an unforeseen change in circumstances.

However, the government does not support introducing an 11-business-day limit for requests made by other persons. This type of reconsideration request is not a merits review of the original decision, but allows the minister to reconsider the decision because of events or circumstances that could not reasonably have been foreseen at the time of the original decision. Imposing a time limit on the exercise of the right to request such a reconsideration would unfairly limit claims where events establishing a ground for reconsideration could not reasonably be foreseen at the time the controlled action decision was first made.

As a safeguard against unmeritorious attempts to delay an approved action, the government agrees that the amended Act will be drafted to make it clear that the minister can only proceed to look at a reconsideration request if first satisfied that the information on which the request is based is new and substantial, or that the change in circumstances was substantial and not reasonably foreseeable at the time the controlled action decision was first made.

Recommendation 48

The Review recommends that subsection 303GJ(2) of the Act be repealed so that Ministerial decisions of the type specified in subsection 303GJ(1), that is, decisions about whether to grant permits for activities affecting protected species and the international movement of wildlife, and advice about whether an action would contravene a conservation order, are subject to merits review.

Government response: Not agreed

The Australian Government notes that section 303GJ(2) (and equivalent provisions in sections 206A, 221A, 243A, 263A and 473) were introduced as part of the 2006 amendments to the EPBC Act. This subsection removes the option of merits review of certain decisions made personally by the minister about permits, certificates, declarations and determinations in relation to activities affecting protected species and for the import or export of wildlife.

Recommendation 48 responds to criticisms of the 2006 amendments to the EPBC Act, and to concerns about a lack of transparency in the Act raised in public submissions to the Review. The government accepts that processes and decisions made under the amended Act should be more transparent, and to achieve this, has agreed to Recommendation 56.

The government notes that section 303GJ(2) and equivalent provisions in sections 206A, 221A, 243A, 263A and 473 relate to two categories of decisions. The first category is for decisions on the import and export of individual specimens, or the taking, killing or injuring of individual listed species or ecological communities. These decisions are usually made by a delegate of the minister, and, while they have an impact on matters in which the Australian Government has an interest and a responsibility to protect, are generally only relevant to an individual or locality. The government will retain merits review for decisions made by delegates. A small number of these decisions will be made by the minister, because they are relevant to the wider community and require the weighing of competing factors to decide what is most appropriate in the national interest. The government's view is that these decisions should not be subject to merits review, because the appropriate accountability is that of the minister to the Parliament.

The second category of decisions is of those that relate to wildlife trade operations or wildlife trade management plans. Wildlife trade management plans generally apply to an entire state or territory jurisdiction, and cover harvesting activities by all operators. Wildlife trade operations vary in scale, and may only cover one operator but may also set a national precedent for operations or plans in other regions. Wildlife trade management plan decisions are usually made by the minister, because they involve the consideration of various competing factors to determine what is in the national interest. Again, this means they are more appropriately made by an elected representative rather than an unelected external merits review body.

Recommendation 49

The Review recommends that the Australian Government consider amending the Act so that the controlled action and/or assessment approach decisions are open to merits review.

Government response: Not agreed

The Australian Government regards controlled action and assessment approach decisions as inappropriate for merits review.

The controlled action and assessment approach decisions are preliminary 'filtering' decisions to determine whether the environmental impact assessment regime of the Act has been triggered, and, if so, what level of assessment is appropriate. The short statutory timeframes for making such decisions reflect the Parliament's desire for an efficient and timely process as set out in the objects of the Act. The government considers there is no environmental benefit to be gained by merits review of these preliminary decisions, and there is considerable risk of frustrating an efficient and timely process.

In reaching these conclusions the government notes that the Review stopped short of recommending a change. Indeed, the Review drew attention to the fact that merits review of these decisions could slow down the process. The Review also queried whether the nature of the controlled action decision makes it suitable for merits review. The government agrees with both these points.

The government agrees there is scope to improve the transparency and quality of the decision-making process. This will be achieved by implementing the changes contained in the government responses to Recommendations 44–46.

Recommendation 50

The Review recommends that the Act be amended to prescribe an extended definition of legal standing for the purpose of merits review applications for decisions made under the Act to include those persons who made a formal public comment during the relevant decision-making process.

Government response: Not agreed

The Australian Government accepts the principle behind this recommendation that the public interest nature of decisions made under the EPBC Act justifies having broad legal standing provisions. The government notes, however, that only a small number of the processes for which merits review is available include a process for receiving public comments. Further, the existing standing provisions are already broad and do not pose an unreasonable barrier to third party litigants.

The government agrees with the finding in paragraph 15.116 of the Report that the Act should be amended to require third parties to inform the minister of any application to the Federal Court brought under the Act as soon as those proceedings are commenced.

Recommendation 51

The Review recommends that a provision be inserted in the Australian Environment Act *like the repealed s.478, to the effect that the Federal Court is not to require an applicant to give an undertaking as to damages as a condition of granting an interim injunction.*

Government response: Not agreed

The repeal of section 478 in 2006 brought the EPBC Act into line with other Commonwealth legislation, under which the Federal Court has the discretion whether or not to require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

The government recognises that the Act has a higher degree of community interest and participation than most Commonwealth legislation. Many of the decisions made under the Act attract significant community interest, and public interest litigation plays an important role in maintaining the accountability of decision makers where there is a need to consider complex environmental, economic and social factors.

The government's view is that the Federal Court's discretion to not require undertakings as to damages when proceedings are commenced in the public interest is sufficient protection to ensure that people acting in the public interest are not discouraged from seeking an injunction by their financial circumstances.

Recommendation 52

The Review recommends that the Act be amended to prohibit the ordering of security for costs in public interest proceedings.

Government response: Not agreed

The Australian Government response to this recommendation should be read in conjunction with its response to Recommendation 53.

The government notes that the potential ordering of security for costs in proceedings that are instituted in the public interest can be an obstacle to litigation, particularly as many public interest litigants have limited funds to pay for what can be expensive proceedings.

The law already provides some protections for public interest litigants, including established criteria governing the exercise of judicial discretion in relation to the making of orders for security for costs. Whether an application for security is oppressive—in the sense of denying a citizen or organisation with limited funds the right to litigate—is a factor that can weigh in favour of a decision to not make a costs order against an applicant.

Noting the breadth of potential considerations relevant to a judicial decision to order security for costs, the government considers that it would be inappropriate to prohibit the exercise of judicial discretion in connection with public interest matters.

The government does not support the differential treatment of public interest matters arising under the amended EPBC Act from that of public interest matters arising under other Commonwealth law.

Recommendation 53

The Review recommends that the Act be amended to empower the Federal Court to decide, as a preliminary matter, whether a case is a 'public interest proceeding' and, if so, to determine the appropriate form of 'public interest costs order'.

Government response: Not agreed

The Australian Government does not agree with Recommendation 53, and supports the existing discretion of courts to determine costs orders in relation to public interest matters.

The government notes there are existing powers under which public interest costs orders can be made. Section 43 of the *Federal Court of Australia Act 1976* (Cth) and section 79 of the *Federal Magistrates Act 1999* (Cth) provide the courts with a general discretion to award costs. In addition, cost capping orders can be made under Order 62A of the Federal Court Rules and Rule 21.03 of the Federal Magistrates Court Rules.

The High Court has recognised, in *Oshlack v Richmond River Council* (1998) 193 CLR 72, that exceptional or special circumstances, including public interest litigation, may warrant departure from the general rule that costs follow the event.

The government's view is that the proposed amendment is not required, because the Federal Court already has sufficient discretion to make appropriate costs orders.

Recommendation 54

The Review recommends that the Act be amended to bring together and rationalise the range of compliance and enforcement powers and responses available to regulate actions likely to impact on matters protected under the Act.

Government response: Agreed

The Australian Government will amend the EPBC Act to provide a single model code of best-practice compliance and enforcement provisions.

While the majority of compliance provisions are contained in Part 17 of the EPBC Act, there are numerous other compliance and enforcement provisions throughout the Act. Introducing a single set of provisions, with consistent language, would make the legislation more effective. It would also make it more accessible to stakeholders, and increase consistency between marine and terrestrial approaches.

The government agrees that the consolidated compliance and enforcement provisions should be applicable to the full range of existing offences under the EPBC Act. This would allow flexible and appropriate remedies to be available for all instances of non-compliance.

In legislating to give effect to the government response, the government will give priority to changes of policy. Giving effect to this recommendation will not involve any change of policy.

Recommendation 55

The Review recommends that the Act be amended to allow for the full suite of administrative, civil and criminal remedies to be applied to any contravention or suspected contravention of the Act.

Government response: Agreed

Although the EPBC Act already contains a wide range of administrative, civil and criminal remedies, not all are available in all cases.

The Australian Government will amend the Act to allow a full range of administrative remedies or civil and criminal remedies or penalties to be applied to any contravention or suspected contravention of the amended Act as appropriate.

This will provide for a more flexible and transparent approach to compliance and enforcement, and will ensure the most appropriate penalty can be applied in all instances. The government will continue to complement its enforcement activities with community and education activities.

The government notes that the Commonwealth environment department has published the comprehensive *Compliance and enforcement policy* (2009), which is available at www.environment.gov.au/about/publications/compliancepolicy.html. This policy is in line with broader government policy on compliance and enforcement.

Recommendation 56

The Review recommends that the Act be amended to provide for:

1. *the publication of documents relating to regulatory activities under the Act;*
2. *the issue of Warning Notices, including specification of the circumstances when they can be issued;*
3. *the sharing of information (obtained both voluntarily and through the use of compulsory or coercive processes) with State and Territory agencies; and*
4. *offence provisions specific to non-compliance with s.449BA(b) conditions set by the DEWHA Secretary when specimens are released to the holder or owner.*

Government response: Agreed

The Australian Government agrees to improve the effectiveness and transparency of the compliance and enforcement provisions of the EPBC Act.

The government agrees with Recommendation 56(1), and will amend the Act to include provisions that will require the timely publication of documents relating to the full range of regulatory activities under the Act, subject to appropriate privacy and confidentiality safeguards. This change will increase transparency and help to build public confidence in the compliance and enforcement system. It will also help to improve awareness of the Act, and in so doing will help to improve levels of compliance.

The government agrees with Recommendation 56(2), and will amend the Act to include the power to issue warning notices. The government's capacity to deliver appropriate levels of compliance and enforcement will be improved by providing this low-level, formal compliance option as an alternative to court action in circumstances where prosecution is unwarranted. To ensure the exercise of the power is appropriately constrained, warning notices would only be issued by the Commonwealth environment department Secretary after the affected party has been given an opportunity to comment on allegations, and the Secretary believes, on reasonable grounds, that a breach has occurred. The government will amend the Act to provide for applications to the Administrative Appeals Tribunal for review of decisions to issue warning notices. The government agrees with the findings of the Report that warning notices could be taken into account when considering a person's environmental record for the purposes of deciding whether to subsequently grant approval for an action under section 136(4).

The government agrees with Recommendation 56(3) and will amend the Act to facilitate the sharing of compliance information with relevant state and territory agencies, subject to privacy and confidentiality safeguards, and to authorise reciprocal arrangements.

The government notes that the objectives of Recommendation 56(4) are now fulfilled by section 449BA, which came into effect on 26 November 2008, and now renders this recommendation redundant.

Recommendation 57

The Review recommends that the provisions of the Act relating to the whale and dolphin watching industry be amended to streamline and ensure consistency of legislation across all jurisdictions, and provide greater certainty for the industry and appropriate protection for cetaceans.

Government response: Agreed in principle

The government agrees in principle with the goal of providing greater certainty for industry and appropriate protection for cetaceans, but it is not possible to enforce consistency across state legislation through a unilateral amendment to the EPBC Act. Instead, the government works with jurisdictions and industry to encourage consistency through the development of national guidelines.

The *Australian national guidelines for whale and dolphin watching 2005* were endorsed by all jurisdictions, and are the basis for whale watching regulation in state, territory and Commonwealth jurisdictions. The government continues to work with all jurisdictions to ensure the guidelines are implemented, and to ensure regional differences are appropriately managed.

The Act provides a high degree of protection for whales, dolphins and porpoises in Commonwealth waters. The Australian Government agrees that the amended Act should continue to ensure appropriate protection for these marine species, and provide certainty for the whale and dolphin watching industry. The government will amend the Act to ensure that regulation of whale watching in Commonwealth areas can be aligned with the states and territories.

The government's *National long-term tourism strategy* seeks to remove regulatory barriers to investment in the tourism industry. Streamlining the legislation relating to the whale and dolphin watching industry, without lowering environmental standards, will promote more industry investment. This is consistent with the tourism strategy and will help its implementation.

Recommendation 58

The Review recommends that the Act be amended to give the DEWHA Secretary power to issue Environment Protection Orders (EPOs), which should specify –

1. *the circumstances in which an EPO can be issued;*
2. *the content of an EPO;*
3. *the circumstances for extensions and review of an EPO; and*
4. *the penalties for contravention of an EPO.*

Government response: Agreed

The Australian Government agrees to Recommendation 58, and will amend the EPBC Act to empower the Secretary to issue environment protection orders.

The government notes that although the Act provides for various compliance and enforcement responses, it currently lacks enforcement mechanisms directed to immediate or short-term 'on-the-ground' regulation, such as the recommended environment protection order.

Similar tools, such as stop work orders, are widely available in the states and territories. An environment protection order will direct a person, whose actions are in breach of the Act, to cease or change that action so as to avoid or minimise the environmental harm being or about to be caused. Division 14B of Part 17, dealing with the making of remediation determinations, already provides a power under which a person in breach of the Act can be directed to remediate (as distinct from cease) environmental harm.

Given the potential impact on individuals' personal rights and interests, legislative safeguards will be included in the Act to ensure that environment protection orders are used appropriately.

These safeguards will include:

- provision for the comprehensive review of the environment protection orders by the Federal Court
- time limits on the duration of an environment protection order
- orders extending an environment protection order to only be available from the Federal Court upon application by the Secretary
- the power to issue an environment protection order will be limited to the Secretary and (through an instrument of delegation) specific senior delegates of the Secretary.

The government will amend the Act to include criteria under which an environment protection order may be issued. The criteria will include:

- a reasonable belief there is a breach or imminent breach of the Act
- a likelihood of a significant impact on a matter protected under the Act
- that the environmental impacts of the action are imminent
- the environment protection order being in accordance with any applicable guidelines issued by the Secretary.

Guidelines relating to environment protection orders will be developed and published.

Recommendation 59

The Review recommends that the Act be amended to confer on the Federal Court power to specify processes for the management of expert opinion evidence and expert witnesses, including to:

1. *encourage the use of a single expert, and*
2. *require parties to confer before the hearing to produce a joint report in which they set out the matters agreed, the matters on which they cannot agree and the reason for the disagreement.*

Government response: Agreed in principle

The Australian Government agrees with the aim of Recommendation 59 to streamline court processes through the time- and cost-effective management of expert witnesses, and notes that efficient dispute resolution and active case management are consistent with the government's Strategic Framework for Access to Justice.

However, the government notes that amendments to the *Federal Court of Australia Act 1976* (Cth), particularly the insertion of section 37P, which came into effect after the release of the Report, support the broad power of the court to give directions about the practice and procedure to be followed in relation to a proceeding, or any part of a proceeding. This includes directions requiring things to be done by the parties, and limiting the number of witnesses who may be called. The Federal Court Rules (Orders 10 and 34A) already contain rules to the effect recommended.

For these reasons, the government considers that amending the EPBC Act to confer these powers on the Federal Court would have no separate effect.

Recommendation 60

The Review recommends that the Act be amended to establish an Environment Reparation Fund and specify:

1. *the establishment of the fund;*
2. *the structure and function of the fund; and*
3. *the ongoing administration of the fund.*

Government response: Not agreed

The Australian Government does not agree to establish an environment reparation fund. The government considers that monies received as part of fines or court orders for breaches of the EPBC Act should be returned to consolidated revenue so that the government can make decisions about allocating this revenue between competing priorities as part of its normal budget process.

The government will retain the current provisions of the Act to apply conditions of approval or to impose remediation orders, where appropriate, to repair or to secure the repair of harm done to the environment by a proponent (including proponents who have breached the Act).

Recommendation 61

The Review recommends that the Act be amended to give the Minister the discretion to undertake compliance and performance audits.

Government response: Agreed

The Australian Government agrees with Recommendation 61, and will amend the EPBC Act to incorporate provisions that enable the auditing of both compliance with legislation (compliance auditing) and environmental outcomes (performance audits).

The Act presently provides for the Commonwealth environment minister to direct an audit where: a person has either an approval or a permit granted under the Act, and the minister believes that he or she has contravened, or is likely to contravene a condition of the permit or approval; or the environmental impacts of an authorised action will be greater than previously considered.

The government agrees to amend the Act to include a discretion to audit compliance with any relevant decision taken under the Act, as part of a routine compliance program.

To ensure good environmental outcomes are achieved and demonstrated under changes to the Act proposed in Recommendations 4 and 6, there is a need for performance auditing to collect information and report on the operational and administrative performance of systems accredited under the Act, including:

- plans, policy and programs endorsed under strategic assessments
- approved regional environment plans
- assessment and approval bilateral agreements
- any actions that have been specified under the amended Act to not require approval on the basis that they be carried out in a particular manner
- accredited management arrangements
- plans and programs accredited under Parts 13 and 13A and the relevant regulations.

The government agrees to establish a program of performance auditing under the Act to measure the environmental outcomes of these systems. The government will establish performance criteria to ensure the standards required as part of the accredited system are put in place. In establishing its performance audit program, the government will liaise with other regulators to ensure there is no unnecessary duplication of requirements on those being audited.

The government will publish all audit reports, subject to requirements of confidentiality, privacy and procedural fairness.

Recommendation 62

The Review recommends that the cost recovery mechanisms under the Act be improved by:

1. *introducing a fee for referring an action or applying for a permit;*
2. *introducing cost recovery for the environmental impact assessment of proposed actions levied on a sliding scale and charged at the time the method of assessment is set;*
3. *amending the Act to allow the Australian Government to recover costs associated with commissioning additional information required because of inadequacies in the information supplied by a proponent;*
4. *developing options for allowing proponents to 'opt in' to a full cost recovery system for management of large, time-critical projects that require additional government resources to assess; and*
5. *reviewing and modernising fees and charges under the Act so they are adjusted according to movements in the Consumer Price Index and other relevant factors.*

Government response: Agreed in principle

The Australian Government considers as a matter of principle that a number of approval processes in the EPBC Act are suitable candidates for cost recovery.

At present, cost recovery under the Act is very limited. The government is exploring options for recovering some or all of the costs of administering the Act in a manner consistent with the Australian Government's Cost Recovery Guidelines.

Cost recovery arrangements are a fundamental component of many Australian Government products and services, including regulation. Cost recovery can provide an important means of improving the efficiency with which Australian Government products and services are produced and consumed. Charges for goods and services can give an important message to users or their customers about the cost of resources involved. It may also improve equity by ensuring that those who use Australian Government products and services or who create the need for regulation bear the costs.

In the context of the EPBC Act, appropriate cost recovery mechanisms have the potential to more equitably share the costs of protecting the environment between the community and those who derive a private benefit and a social licence from an activity that is approved under the Act. Cost recovery will also allow the environmental assessments and approvals to keep pace with Australia's growing economy.

In line with the government's Cost Recovery Guidelines, opportunities will be explored for recovering the cost of both existing administrative functions—particularly environmental impact assessment and associated monitoring, audit and compliance of approved projects—as well as the proposed reforms to the Act that will deliver greater certainty and improve government performance against statutory timeframes for business.

Options for new cost recovery, where appropriate, will directly inform the pace and scale of implementation of the reforms outlined in this government response.

As an initial step, the government has done a stocktake of its business activities and statutory processes under the Act to investigate potential cost recovery models. This will include further consultation before the amending legislation is introduced. This process would inform the development of a cost recovery impact statement.

The government will follow its standard procedures to develop the cost recovery impact statement, as outlined in its Cost Recovery Guidelines, including public consultation.

Recommendation 63

The Review recommends that the provisions of the Environment Protection (Alligator Rivers Region) Act 1978 *(Cth) be incorporated into the Act and that the role of the Supervising Scientist be expanded to include all uranium mining activities in Australia.*

Government response: Agreed in part

The Supervising Scientist is established under the *Environment Protection (Alligator Rivers Region) Act 1978* (Cth). The Supervising Scientist has an advisory role and is not a regulator, though he or she plays an important role complementary to regulation by providing advice to the respective territory and Commonwealth regulatory authorities. In the Alligator Rivers region, the Northern Territory Department of Resources regulates uranium mining, and the Department of Resources, Energy and Tourism has a regulatory role under the provisions of the *Atomic Energy Act 1953* (Cth).

The Government will amend the EPBC Act so that the advisory role of the Supervising Scientist will apply to all uranium mining activities in Australia. This will increase public confidence in the scientific rigour of the assessment and monitoring of uranium mining, as the Supervising Scientist is an independent statutory officer. The Supervising Scientist can already provide advice to the environment minister under the Environment Protection (Alligator Rivers Region) Act in the assessment and compliance monitoring of any uranium mining in Australia. Under the EPBC Act assessment and approvals process, it is currently standard practice for the Commonwealth environment department to seek the advice of the Supervising Scientist on all uranium mining proposals, and in ongoing compliance monitoring for approved projects, including those outside the Alligator Rivers region. To provide certainty as to the ongoing role of the Supervising Scientist, the government will amend the EPBC Act to formalise the current standard administrative practice.

The specialist knowledge of the Supervising Scientist about potential environmental impacts associated with uranium mining is already, and should continue to be, an important consideration in ministerial decision making for nuclear actions. The formalised role will not unnecessarily duplicate the role of state and territory regulators.

The government notes the strong working relationship between the Supervising Scientist and Geoscience Australia, and the role Geoscience Australia plays in providing technical advice on resource matters surrounding uranium activities. This relationship should continue under the expanded Supervising Scientist model in providing holistic technical advice on uranium mining.

The government considers there are no compelling reasons to incorporate the provisions of the Environment Protection (Alligator Rivers Region) Act into the EPBC Act. Incorporating these provisions would be legislatively complex, and would not achieve any significant reform.

Recommendation 64

The Review recommends that the Act be amended to incorporate the requirements of the following pieces of Commonwealth legislation to remove overlaps and duplication in assessment and authorisation processes:

- Aboriginal and Torres Strait Islander Heritage Protection Act 1984 *(Cth);*
- Environment Protection (Alligator Rivers Region) Act 1978 *(Cth);*
- Environment Protection (Sea Dumping) Act 1981 *(Cth);*
- Historic Shipwrecks Act 1976 *(Cth); and*
- Protection of Movable Cultural Heritage Act 1986 *(Cth).*

The Review further recommends that Part V of the Sea Installations Act 1987 *(Cth) be retained but the rest of the Act, and the* Sea Installations Levy Act 1987 *(Cth), be repealed.*

The Review also recommends that the Australian Government consider the reviews of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 *(Cth),* Historic Shipwrecks Act 1976 *(Cth),* Protection of Movable Cultural Heritage Act 1986 *(Cth) and Commonwealth maritime enforcement legislation in tandem with this Report.*

Government response: Agreed in part

The government does not agree to incorporate the provisions of the *Environment Protection (Sea Dumping) Act 1981* (Cth) into the EPBC Act.

The government agrees to consider incorporating the requirements of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) into the EPBC Act.

The government does not agree to incorporate the requirements of the *Environment Protection (Alligator Rivers Region) Act* (Cth), the *Historic Shipwrecks Act 1976* (Cth) or the *Protection of Movable Cultural Heritage Act 1986* (Cth) into the EPBC Act.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) has been the subject of an independent review (*Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*). The government is considering the recommendations of that review. As part of that consideration the government will consult with the Indigenous Advisory Committee established under the EPBC Act to ensure that a consolidation of the two Acts is the most effective mechanism to achieve ongoing protection of traditional heritage.

The government agrees it is desirable to remove regulatory uncertainty or perceived duplication between the *Environment Protection (Sea Dumping) Act 1981* (Cth) and the EPBC Act. Following consultation with industry, the Commonwealth environment department will develop targeted guidance to better inform proponents on how to prevent unnecessary duplication of effort when approval is required under both pieces of legislation.

The government does not agree to incorporate the *Historic Shipwrecks Act 1976* (Cth). The approach to conservation in the Historic Shipwrecks Act is significantly different from that in the EPBC Act, and incorporating its provisions into the EPBC Act would be legislatively complex, for little if any benefit. The government reviewed the Historic Shipwrecks Act in 2009 and released a discussion paper—Review of the Historic Shipwrecks Act 1976 and consideration of the requirements arising from the UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage. The government is currently finalising the report of the review of the Historic Shipwrecks Act and its recommendations. The government believes that the operation of the two Acts should be as seamless as possible, and considers that this can be achieved by the EPBC Act cross-referencing the Historic Shipwrecks Act where needed, particularly with reference to impacts. The government also agrees that the Historic Shipwrecks Act should be amended to be consistent with the authorised officer and enforcement powers of the EPBC Act.

The government does not agree to incorporate the *Protection of Movable Cultural Heritage Act 1986* (Cth), as there are limited policy, stakeholder and subject matter linkages between the two Acts. In addition, since the Review, responsibility for this Act has moved to another minister.

The government notes that following the introduction of the EPBC Act and given the provisions of the *Great Barrier Reef Marine Park Act 1975* (Cth), the *Sea Installations Act 1987* (Cth) has become functionally redundant. In line with its deregulation agenda, the government will repeal the *Sea Installations Levy Act 1987* (Cth) and all of the *Sea Installations Act 1987* apart from Part V, which allows for the application of state and Commonwealth law to sea installations or areas next to sea installations.

Recommendation 65

The Review recommends that s.160 of the Act be amended to require the Airports Minister to consult with the Environment Minister when considering whether to approve a draft environment strategy under the Airports Act 1996 *(Cth).*

Government response: Agreed in principle

The Australian Government agrees with the policy intention of this recommendation, but considers outcomes consistent with the recommendation can be delivered within the EPBC Act's existing policy framework. The government considers that the policy objective discussed in the text supporting this recommendation—that is, the greater involvement of the Commonwealth environment minister in making decisions about environmental management on airport land—can be achieved through the assessment provisions that already exist in the Act.

The December 2009 Airports White Paper announced that airport master plans and airport environment strategies would become a combined document. The minister responsible for the *Airports Act 1996* (Cth) does not place conditions on the approval of a master plan or airport environment strategy, because the specific details of developments are more appropriately addressed in major development plans.

The government considers that it is preferable to assess long-term airport business plans strategically, and to develop environmental approval conditions that would guide airport development beyond the life of the five-year master plan. This could be done under the existing legislation either by assessing a proposed action under Part 8 of the EPBC Act, or as a strategic assessment under Part 10 of the Act. In adopting this approach, the government notes that an assessment and approval of these business plans under Part 8 and Part 9 has already been done in the redevelopment of Canberra Airport and at Perth's Jandakot Airport.

Both of these mechanisms allow airport-lessee companies to identify environmentally significant or sensitive areas within the airport's boundaries and/or to provide for offsets for cleared land, potentially for the balance of the life of the airport's lease. Under this arrangement, there would be no need to assess subsequent master plans or airport environment strategies, provided they are consistent with the initial EPBC Act approval. The government considers that this approach will provide longer-term certainty for airport lessee companies, and positive outcomes for the environment and heritage.

The government will amend section 160 of the EPBC Act so that the airports minister would only be required to seek the advice of the environment minister on major development plans (as defined in the *Airports Act 1996*), in the following circumstances:

- if adopted or implemented, the plan has, will have or is likely to have a significant impact on the environment (as required under section 160 of the EPBC Act)
- the plan has not already been assessed and approved under Parts 8 and 9, or strategically assessed under Part 10, of the EPBC Act, or otherwise granted project approval.

Recommendation 66

The Review recommends that the Australian Government consider streamlining the relationship between the Offshore Petroleum and Greenhouse Gas Storage Act 2006 *(Cth), the* Petroleum (Submerged Lands) (Management of Environment) Regulations 1999 *(Cth) and the* EPBC Act*, with a view to maximising regulatory efficiency while retaining strong environmental safeguards.*

Government response: Agreed

The Australian Government agrees to consider opportunities for increasing regulatory efficiency while retaining strong environmental outcomes by streamlining the legislative arrangements that relate to offshore petroleum activities. The government also notes that this recommendation is consistent with the findings of both the 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector (PC Review) and the 2010 Report of the Montara Commission of Inquiry (Montara Inquiry).

The government notes a process is already under way to establish a national regulator, to be known as the National Offshore Petroleum, Safety and Environmental Management Authority (NOPSEMA) for offshore petroleum activities under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth). NOPSEMA is intended to regulate safety, well integrity, environment plans and day-to-day operations under the Offshore Petroleum and Greenhouse Gas Storage Act for all offshore petroleum and greenhouse gas storage activities in Commonwealth offshore areas. State and territory governments will also have the option on a bilateral basis to confer on NOPSEMA their regulatory powers for state and territory waters.

The government notes there will be options under the amended EPBC Act to accredit the systems and processes administered by NOPSEMA in accordance with the response to Recommendation 4(3). Accreditation would be subject to these systems and processes meeting a statutory test based on the concept of providing equivalent environmental protection outcomes to that of the amended Act.

The government is also undertaking further consideration of the legislative arrangements for the protection and management of the marine environment, consistent with the government response to the Report of the Montara Commission of Inquiry.

Recommendation 67

1. *The Review recommends that the Australian Government, in the interests of promoting ecologically sustainable development, develop a system of environmental accounts to:*
   - *(a) establish baseline national environmental information;*
   - *(b) provide capacity to systematically monitor changes in the quality of the Australian environment;*
   - *(c) provide an information basis for improved regional planning and decision-making; and*
   - *(d) provide a secondary objective of strengthening the capacity of Local Government land use planning decision-making.*
2. *The Review also recommends that the Australian Government:*
   - *(a) strengthen arrangements for continued State of the Environment (SoE) reporting; and*
   - *(b) link information requirements for SoE reporting to the development of the National Environmental Accounts.*

Government response: Agreed in principle

The Australian Government agrees that investigating the development of national environmental accounts is a high priority for environmental management in Australia.

The government is already looking at how national environmental accounts might be best developed and maintained in terms of institutional and technical arrangements to deliver environmental information as outlined in (1)(a), (b), (c) and (d) of this recommendation. The government announced in the 2010–11 Budget that it will invest $18 million over four years (2010–11 to 2013–14) to establish a National Plan for Environmental Information to help monitor Australia's precious environmental assets into the future.

This initiative lays the foundations for developing environmental accounts by establishing the institutional arrangements, priority-setting mechanisms, standards and infrastructure to deliver coordinated national environmental information. The government recognises that delivering environmental accounts will require establishing ongoing routine monitoring of environmental assets, and is investigating options for achieving this.

National environmental accounts should record changes in the full range of natural systems, encompassing Australia's atmospheric, marine, terrestrial and aquatic ecosystems and natural resources. Although focused on biophysical information, they should be suitable for integration with social and economic information, such as that provided by the Australian Bureau of Statistics, as well as to provide an underpinning for state of the environment reporting.

The government, in consultation with the states and territories, is investigating a national environment information system to coordinate the collection, analysis and delivery of environmental information across jurisdictions. If established, this system would also support the development and maintenance of national environmental accounts.

The government notes that establishing national environmental accounts closely links to, and would provide support to, other government policy, including climate change adaptation policy. Information in environmental accounts would also be important for environmental reporting across various sectors and for the outlook reports that identify emerging environmental threats, as outlined in Recommendation 23.

The government agrees that state of the environment reporting arrangements should be strengthened, including by providing the outlook reporting function identified in Recommendation 23. The *2011 State of the environment report* currently being developed will include sections on the environmental outlook, and this aspect of the report should be progressively strengthened in future reports. National environmental accounts, if established, should also be designed to support state of the environment information requirements.

Recommendation 68

The Review recommends that the Biological Diversity Advisory Committee be disbanded and its functions be transferred to the Threatened Species Scientific Committee (TSSC).

The Review further recommends that the name of the TSSC be changed to the 'Biodiversity Scientific Advisory Committee' to reflect the new role and functions of the Committee under the Act better.

Government response: Agreed

The Australian Government will amend the EPBC Act to establish a new statutory committee named the Biodiversity Scientific Advisory Committee. The new committee's function will be to provide scientific advice, as it has been for the Threatened Species Scientific Committee.

The current functions of the Threatened Species Scientific Committee are clearly defined in the Act, resulting in important scientific advice being provided to the minister. These clearly defined functions should be maintained and will be transferred to the new Biodiversity Scientific Advisory Committee.

While the general functions of the Biological Diversity Advisory Committee are currently defined in the Act, there are no specific roles conferred on the Biological Diversity Advisory Committee by the Act or the regulations, and in the past there has been a lack of direction about its role. The government agrees to disband the Biological Diversity Advisory Committee.

The amended Act will provide for the new committee to provide scientific advice to the minister on matters relating to the conservation of biological diversity (including threatened species and ecological communities) and the ecologically sustainable use of biological resources. Arrangements for the role of the new committee will be clearly outlined in the amended Act, including the qualifications of its members, its relationship with the Commonwealth environment department, its relationship with the Indigenous Advisory Committee and the Australian Heritage Council, and its role in providing advice to the minister.

Recommendation 69

The Review recommends that the Act be amended to establish a formal link between:

1. *the Indigenous Advisory Committee (IAC) and the new Biodiversity Scientific Advisory Committee; and*
2. *the IAC and the Australian Heritage Council.*

Government response: Agreed

The Australian Government agrees to Recommendations 69(1) and 69(2).

The function of the Indigenous Advisory Committee is to 'advise the Minister on the operation of the EPBC Act, taking into account the significance of Indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity'. The Indigenous Advisory Committee also provides broader advice to the Commonwealth environment department on policies and programs and appropriate methods for engaging and consulting with Indigenous peoples.

There are currently provisions in the Act for coordination between the Threatened Species Scientific Committee and the Australian Heritage Council, which is established under the *Australian Heritage Council Act 2003* (Cth). These provisions allow for sharing of information that may be relevant to both listing processes. The government will amend the Act to apply these provisions to the new Biodiversity Scientific Advisory Committee.

The Australian Heritage Council and the heritage listing provisions of the EPBC Act recognise that consultation with Indigenous stakeholders is the best means of addressing Indigenous heritage issues. This standard is embedded in the national and Commonwealth heritage management principles included in EPBC Regulations 10.01E and 10.301D. Expert advice on Indigenous heritage matters is provided by the two Indigenous members of the Australian Heritage Council.

In addition, the government will amend the Act to allow these statutory committees to discuss any matters within their responsibilities with another committee without breaching any requirement of the Act or of confidentiality. The government will also seek advice from the committees on how the new arrangements will best work in practice.

Recommendation 70

The Review recommends that the provisions of the EPBC Act and the Australian Heritage Council Act 2003 *(Cth) be merged, and incorporated into the* Australian Environment Act*, so that the functions of the Australian Heritage Council are conferred under a single Act.*

Government Response: Agreed

The Australian Government agrees with Recommendation 70, and will amend the EPBC Act to implement the recommendation.

The Australian Heritage Council's functions are presently divided across the two statutes. The government accepts that efficiencies and transparency of process will be achieved by repealing the *Australian Heritage Council Act 2003* (Cth) and incorporating its provisions into the amended EPBC Act in a way that retains the role, functions and independence of the Australian Heritage Council.

Recommendation 71

The Review recommends that an independent National Environmental Commissioner and National Environment Commission be established under the Act and supported by DEWHA.

Government response: Not agreed

The Australian Government does not agree to this recommendation. The government supports increased transparency and accountability, and has agreed to various initiatives to improve these. One example of this is the government's agreement to release recommendation reports and other reports relating to decision outcomes, as set out in the response to Recommendation 44. The government has set out other initiatives to increase transparency in its responses to Recommendations 45 and 46.

The government also supports the need for objective science-based decision making and accepts there is value in obtaining advice from expert bodies that have statutory independence. The government notes there will be three such bodies under the EPBC Act: the Biodiversity Scientific Advisory Committee; the Australian Heritage Council; and the Indigenous Advisory Committee. The role of the Biodiversity Scientific Advisory Committee will be to provide comprehensive scientific advice on biodiversity issues.

Broader issues of sustainability can be referred by the government to the Productivity Commission. The Productivity Commission currently has four research themes, one of which focuses on environmental and natural resource management. It conducted a roundtable on issues relating to sustainable population in March 2011.

The government can also convene an inquiry where such statutory independence is required in assessing a major project. Under Section 107 of the Act, the minister can appoint in writing one or more persons as a commission to conduct the inquiry and report to the minister on the impacts of actions.

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