

**ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL
(NO. 1) 2006**

SECOND READING SPEECH

The *Environment Protection and Biodiversity Conservation Act 1999* (known generally as the 'EPBC Act') is the Australian Government's premier piece of environment and heritage legislation. The EPBC Act has now been in operation for just over six years – during this time the Act has gained wide acceptance across the Australian community, and has achieved real results for the environment.

The EPBC Act has established Australia's place as a world-leader in environmental legislation. The Act has been acknowledged as a world-class and innovative piece of environmental legislation. It is one of the few environmental laws anywhere in the world that provides a comprehensive national approach to environmental protection and that deals with such a wide range of environment and heritage issues.

For the first time in our federation, the EPBC Act clarified the environmental roles and responsibilities of the Australian Government, and the linkages between it and the state and territory governments. The Act provides mechanisms for consultation and cooperation between those governments. It puts in place a streamlined environmental assessment and approvals process in a way that is predictable, transparent and efficient, employing statutory timeframes to ensure timely decision-making.

However, experience over the last six years has shown there are still ways in which the operation of the EPBC Act can be improved to optimise its efficiency while maintaining and enhancing its environmental effectiveness.

The Environment and Heritage Legislation Amendment Bill proposes those improvements. The same basic framework and general approach are to be maintained. The aim is to continue to strengthen environment and heritage protection while streamlining some of the provisions of the EPBC Act and providing greater capacity and flexibility for more strategic approaches to be employed.

Achievements under the EPBC Act

The keystone of the EPBC Act is the protection of the seven matters of national environmental significance for which the Australian Government has particular responsibility. These are:

- World Heritage properties;
- National Heritage places;
- wetlands of international importance (that is, wetlands declared under the Ramsar Convention);
- nationally listed threatened species and ecological communities;
- listed migratory species;
- the Commonwealth marine area; and
- nuclear actions.

The EPBC Act provides for the assessment and approval of projects likely to have a significant impact on any of these matters of national environmental significance –

probably the most well known of its functions. The EPBC Act also deals with a wide array of other environment and heritage matters. These include:

- listing and protection of World Heritage properties, National Heritage places, Ramsar wetlands, threatened species and ecological communities, and marine and migratory species;
- identification and protection of the Commonwealth's own Heritage – important places within the Australian Government's control;
- regulation of actions on Commonwealth land or affecting Commonwealth land;
- recovery plans, threat abatement plans and other types of plans to assist the protection of Australia's unique biodiversity;
- regulation of wildlife trade to ensure ecological sustainability and the humane treatment of wildlife;
- strategic assessment and accreditation of fisheries;
- protected area management; and
- a range of activities to ensure compliance with, and enforcement of, the Act.

Since its introduction, the EPBC Act has achieved major environmental wins for Australia.

These include the establishment of the Australian Whale Sanctuary and the protection of all cetaceans (whales, dolphins and porpoises) within its waters. The EPBC Act has also provided national protection for the first time for Australia's 64 Ramsar wetlands sites. It has provided comprehensive protection across the nation for the first time for our unique threatened species and ecological communities.

In all, almost 2,000 referrals of developments proposals have been made since July 2000 under the EPBC Act. More than 400 have required assessment and approval in order to protect matters of national environmental significance. Close to another 300 have not been required to undergo the EPBC Act approval process because they were designed in such a way as to avoid adverse impacts on matters protected by the Act. The EPBC Act has therefore protected matters of national environmental significance more effectively and more comprehensively than ever before in Australia's history.

In addition, over 120 fisheries have been assessed and associated accreditations and declarations made. Nearly 200 new species, ecological communities and processes have been included on the various lists established by the Act. Over 250 threatened species recovery plans and 50 draft or finalised Ramsar management plans are in place. Over 370 places have been added to the National and Commonwealth Heritage lists. And over 15,000 permits dealing with wildlife protection have been issued.

The EPBC Act has afforded greater certainty in relation to Australian Government involvement in environmental matters, leading to changing attitudes and raised standards. Since the introduction of the EPBC Act, developers have become aware that their proposals will not proceed without adequate consideration of ecological sustainability. They are increasingly designing their projects and consulting government and the community with these principles in mind, with the result that the EPBC Act provides far more protection than previously for Australia's rich and unique wildlife.

Significant legal successes have also been achieved, including record penalties for illegal land clearing activities, and the establishment of conservation agreements for

threatened species affected by development. A new National Heritage regime has been initiated, already providing recognition and protection of 34 outstanding heritage places which have shaped the nation's identity, such as the Port Arthur Historic site, and the Sydney Opera House.

Despite these successes, however, it has become apparent that the operation of the EPBC Act can be improved, particularly for those who make applications or nominations under the Act. Operational improvements can be achieved by reducing processing time and decision points affecting the environmental assessment and approval of proposed developments, using more strategic approaches, and providing greater incentive for development interests, the states and territories, and local government to engage with the Act earlier in their planning cycles.

The necessary changes can be achieved in a manner that does not weaken protection for Australia's important biodiversity and heritage, with the focus continuing to be on achieving strong environmental outcomes.

Changes to the EPBC Act

Within this context, the Bill aims to make improvements in four distinct categories: streamlining administration of the Act for efficiency and effectiveness, thereby cutting 'red tape' in government; being more strategic and flexible in directing Australian Government action on the environment; strengthening compliance with, and enforcement of, the EPBC Act; and, finally, implementing a range of minor amendments needed to overcome some technical deficiencies in the Act.

Streamlining for efficiency and effectiveness – cutting 'red tape' in Government

Cutting red tape is a priority for the Australian Government. The January 2006 Banks report to the Government entitled *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* concluded, among other things, that current Australian regulation imposes excessive and unnecessary costs on business. While the Banks Taskforce did not make any recommendation to change the regulatory regime of the EPBC Act, the Government has been mindful in reviewing the EPBC Act to examine the nature of the EPBC Act processes to ensure that the Act's processes are as efficient and effective as possible. In particular, the Government sees no need for administrative process for process' sake. If we can reduce 'red tape' without compromising environmental protection, then this is what we will do.

In this context, the Bill contains many amendments, some of which are of a technical nature, designed to reduce duplication and complexity. For example, the Bill proposes the streamlining of project assessment and permit stages so that once a project is assessed and approved under Chapter 4 of the EPBC Act, subsequent protected species permits may be issued under Chapter 5 without further assessment. Currently, the permit regime of the Act is separate from project assessments and approvals. The Bill also eliminates current difficulties in accrediting or recognising fisheries managed under the *Torres Strait Fisheries Act 1984* and the *Fisheries Management Act 1991*.

The proposed changes will include greater capacity to reduce processing time for assessments and approvals of developments referred under the Act by reducing the

number of mandatory steps taken by applicants and enabling the Australian Government to make decisions on different Act approval stages simultaneously. A new process will be introduced to enable the Government to make quicker decisions on more straight-forward proposals.

The Bill also allows World Heritage properties to be transferred across to the National Heritage List without the need for further assessment. This will increase efficiency and avoid duplication in the consideration of our World Heritage sites, such as Kakadu National Park or the Great Barrier Reef, on the list of places of most heritage significance to our nation.

The Bill also allows for improved cooperation on environmental assessment and approval processes between the Australian Government and state and territory governments. These improvements should assist state and territory governments to respond positively to the Banks Taskforce recommendations calling for more bilateral agreements (which will remove duplication between state/territory and federal environmental assessment and approvals) to be signed under the EPBC Act.

Changes to the EPBC Act will clarify responsibilities for proponents and simplify the referral, assessment and approval processes. The Bill will also allow the Minister for the Environment and Heritage to publish policy statements on the application of the EPBC Act that will assist decision-making and inform the community. The policy statements will enable regional and local planning schemes to be prepared in a manner which will facilitate their accreditation under the EPBC Act, providing greater certainty for all.

The proposals to streamline the EPBC Act will provide substantial benefits to the nation. They will benefit industry and the economy in a way that will maintain our strong commitment to protecting Australia's unique and iconic natural, historic and Indigenous heritage. They will ensure that ecologically sustainable development becomes an ongoing reality for Australia.

Being more strategic and flexible

One of the major changes proposed by the Bill is a practical proposal to put in place a strategic framework that will allow the Australian Government greater flexibility and capacity to deal with the emerging environmental issues of the twenty-first century.

One way in which the Bill achieves this objective is to provide greater incentives for authorities and proponents to engage in strategic assessments, bioregional planning and conservation agreements under the EPBC Act. While the EPBC Act currently provides for such strategic approaches, the take-up to date has been poor. Changes will make it easier for developments to be considered earlier in the planning process and in strategic and regional contexts. As these approaches are also likely to take state, territory and local government and regional natural resource management plans into account, they will provide a stronger and more strategic framework for environment and heritage protection.

The Bill also provides for a more strategic approach to the listing of heritage places and threatened species and ecological communities. The roles of the Australian Heritage Council and the Threatened Species Scientific Committee will also be expanded to enable a strategic approach to be taken to listing. In future, roles of the

Council and Committee will be restructured to provide advice to the Minister on annual work programmes, which will be based on the strategic importance of nominations and other listing proposals rather than, as now, simply when they happened to be nominated. Both the Council and the Committee will retain their expert independent status as the Minister's advisers on these matters.

To complete the transition to a three-tiered heritage system for governments as proposed by the Council of Australian Governments in 1997, the Register of the National Estate is to cease to be a statutory register. This will not occur until after a transition period of five years which will allow states and territories to complete the task of transferring places to state, territory and local heritage registers. The Register will be maintained on a non-statutory basis as an important archive.

The Bill will also establish the List of Overseas Places of Historic Significance to Australia, which will allow for the symbolic recognition of overseas sites that have a special place in Australia's history. This change will allow Australia to keep a statutory list of these important places in a way that does not give rise to perceptions that this may affect the sovereignty of other countries.

Similarly, the Bill will shift the focus from recovery plans to recovery action for our threatened species and ecological communities. New listings will be supported by conservation advice prepared by the Threatened Species Scientific Committee, which will lay out practical conservation actions that can be implemented by local and regional interests. Recovery plans will still be developed but recovery documentation will be more flexible than currently prescribed.

Another area of strategic reform is the alignment of the EPBC Act and the *Fisheries Management Act 1991*. The Bill will provide increased scope for the fisheries regulator to manage depleted fisheries to environmental and economic sustainability. Through listing such species as conservation dependant where they are supported by appropriate management plans, we can be confident of their long term survival in nature. The EPBC Act will continue to provide the regulatory underpinning for the protection of such marine fish species. Should the recovery targets of a management plan not be achieved, the EPBC Act provisions will allow for the threatened species listing of that particular marine fish species to be upgraded to a higher level of threat with an accompanying higher level of protection.

Strengthening compliance and enforcement

While there have been a number of successes in ensuring compliance with the EPBC Act during the first six years, practice has shown that the current provisions are often difficult to use. The proposed amendments will strengthen environmental protection by fixing these problems and making it easier and quicker to bring compliance action against people and organisations that breach the Act.

The Bill establishes a range of new enforcement options as an alternative to lengthy and expensive court proceedings. The amendments will enhance enforcement action taken to address minor breaches of approval conditions by allowing the use of a new set of reduced penalties. Changes to the Act will also broaden the powers of the Minister for the Environment and Heritage to require remediation action where matters of national environmental significance have been damaged without the need for resort to court action.

The amendments will broaden the types of conditions to be attached to development approvals to allow voluntarily compensatory actions and financial contributions to offset the impacts of developments in situations where impacts are unavoidable.

The Bill will also introduce a regime to deal with the increasing problem of environmental crimes conducted by foreign nationals in fishing vessels in the Australian jurisdiction but outside the migration zone. The regime will provide for detention of suspected persons in Australia and the transition, if necessary, from environment detention to immigration detention under the Migration Act.

Minor technical amendments

The Bill also proposes a range of minor technical amendments. In general, these are designed to improve efficiency and effectiveness. In some cases, they seek to clarify processes. For example, the Bill sets out a new way of handling requests for reconsideration of decisions taken under the Act. This new process is quicker and more efficient while still allowing all interested parties to have their views heard.

Closing

In conclusion, the changes to the EPBC Act proposed by this Bill will ensure matters of national environmental significance continue to receive the highest possible level of protection. They will cut 'red tape' and enable quicker and more strategic action to be taken on emerging environmental issues. They will make environmental decision-making more efficient and cost-effective. They will provide greater certainty for industry while, at the same time, strengthening compliance with, and enforcement of, the EPBC Act. They will make regional decision-making with its better strategic framework a priority and increase the general understanding of the processes and mechanisms of the EPBC Act.

The Bill will build on the substantial environment and heritage gains so far achieved under the EPBC Act and provide the framework for Australia to move forward in the twenty-first century. The proposed changes will strengthen the EPBC Act's environmental protection regime and increase its effectiveness by facilitating more strategic approaches while, at the same time, reducing the extent to which the Act is process driven in a non-productive manner.