

South Australian Government

Submission to the

Independent review of the

Environment Protection and Biodiversity

Conservation Act 1999

NAME OF ORGANISATION:

South Australian Government

CONFIDENTIALITY STATEMENT:

I do not want this submission to be treated as **confidential**

CONTACT OFFICER:

Ms Jill Brooks, Manager, Planning and Assessment, Department for Environment and Heritage, telephone 08 84634820, e-mail brooks.jill@saugov.sa.gov.au

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SUMMARY

The South Australian Government welcomes the opportunity to contribute to the *10 year Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

South Australia believes that the EPBC Act has provided a positive contribution to environmental protection and biodiversity conservation over its first ten years of operation - more often than not supporting and/or complementing South Australian legislation designed to achieve the same ends. However, and in this regard, South Australia would welcome initiatives that would deliver:

- a) simplified processes - particularly through red tape reduction
- b) reduced duplication - through accrediting (and supporting the resourcing of) appropriate South Australian regulatory processes
- b) continued cooperation in ongoing policy development and planning in relation to emerging pressures and the development of best practice regulation, and
- c) in particular, urgent and collaborative effort to meet the challenges associated with climate change.

These initiatives are consistent with COAG's national regulatory reform agenda in which jurisdictions are developing implementation plans (by mid 2009), as part of the Seamless National Economy National Partnership Agreement, on opportunities for strategic assessments and other bilateral agreements.

INTRODUCTION

The South Australian Government submission was prepared by the Department for Environment and Heritage in consultation with the following agencies: the Departments of Water, Land and Biodiversity Conservation; Transport, Energy and Infrastructure; Planning and Local Government; Primary Industries and Resources South Australia; Premier and Cabinet; Trade and Economic Development; and the Environment Protection Authority; Land Management Corporation; SA Water; and the South Australian Tourism Commission.

The submission highlights the key areas of interest to the South Australian Government, and includes issues raised in South Australia's November 2008 submission to the Senate Standing Committee on Environment, Communications and the Arts Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. A copy of the submission is provided in **Attachment A** for consideration by the review team.

The areas of most interest to the South Australian Government and summarised in the next section pertain to:

- simplified processes
- ongoing work to identify effective ways to achieve the objects of the EPBC Act, and
- urgent and collaborative effort to meet the challenges associated with climate change and other emerging pressures.

The final section of this submission also provides more detailed responses to the (44) questions outlined in the Discussion Paper.

The South Australian Government would welcome the opportunity to discuss any further detail with the Review Panel.

SIMPLIFIED PROCESSES

Like other jurisdictions, South Australia is looking to reduce red tape and deliver legislation that is clear, simple and practical for users. Some of the ways in which this can be achieved is by avoiding duplication and continuing existing work to identify and prioritise new and emerging opportunities.

a) **Avoiding duplication**

South Australia has around 19 pieces of legislation that deal with environment protection, biodiversity conservation, cultural and natural heritage and resource management (refer to SA's policy and legislative framework in **Attachment B**)

In recognising the potential for duplication between the EPBC Act and South Australia's legislation, in June 2001, the *Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001* was passed to facilitate the dovetailing of South Australian assessments and the Commonwealth assessment of proposals under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

Work has since progressed to streamline relevant State and Commonwealth processes in areas such as the assessment and regulation of mining proposals under South Australia's *Mining Act, 1971* and of major developments under the *Development Act 1993*: the most recent of which is an Assessments Bilateral Agreement accrediting the South Australian Major Development assessment process conducted pursuant to Division 2 of Part 4 of the South Australian *Development Act 1993*.

b) Further opportunities

Further to the work that has already been instigated, other opportunities to improve the operations and outcomes of the EPBC Act are being considered as part of the implementation plans through COAG's Seamless National Economy National Partnership Agreement. This work, however, will require substantial effort to ensure clear responsibilities, adequate resources and the appropriate checks and balances are included in any new arrangements.

Examples of appropriate South Australian regulatory processes that could benefit from bilateral agreements or accreditation under the EPBC Act are as follows:

- Given the standards for activities and outcomes set out in the *Petroleum Act 2000* (SA) and the *Mining Act 1971* (SA) are the same as the standards for outcomes specified by the objectives and letter of the EPBC Act, it is likely that these two acts could use the same approvals process as the EPBC Act. This will increase the efficiency and effectiveness of the co-regulation of the upstream petroleum, geothermal and minerals resources sector.
- In offshore petroleum exploration, the South Australian Minister for Mineral Resources Development is the Designated Authority for the *Offshore Petroleum Act 2006* (previously the *Petroleum (Submerged Lands) Act 1967*). There are stringent requirements under this Act for environmental management. Most marine petroleum exploration activities are referred under the Act by proponents even though they are separately assessed and approved under the *Offshore Petroleum Act 2006* and associated *Management of Environment Regulations 1999*. A similar bilateral approach should be considered for the *Offshore Petroleum Act 2006*.
- Accreditation of processes applying to 'Crown or Public Infrastructure' activities assessed under Section 49 of the *Development Act 1993* or through formal processes required by the Department for Transport, Energy and Infrastructure would increase the efficiency and effectiveness of delivering major infrastructure projects while also meeting the objects of the EPBC Act. The processes are similar to those accredited under the bilateral agreement for activities under Section 46 'Major Developments' of the *Development Act 1993*.

MORE EFFECTIVE WAYS TO ACHIEVE THE OBJECTS OF THE ACT

South Australia's submission to the Senate Inquiry (refer **Attachment A**) had an emphasis on strategic approaches as a major means for the Act to be more effective. In particular for the Commonwealth to instigate urgent and collaborative action, to:

- a) adopt more holistic, systems-based and landscape-scale approaches to complement the current listing and referral processes,

- b) accelerate work with States/Territories on projects that will progress strategic approaches under the EPBC Act, consistent with the COAG agenda and be focussed on 'emerging pressures'.

OPPORTUNITIES AND OPTIONS IN WHICH THE ACT COULD BE BETTER USED TO DEAL WITH CLIMATE CHANGE AND OTHER EMERGING PRESSURES

There are a number of areas in which the EPBC Act could be better used to deal with climate change and other emerging pressures. These include:

- A) Progressing work progressed to explore how a **Threat Abatement Plan for the Loss of Climatic Habitat Caused by Anthropogenic Emissions of Greenhouse Gases** could complement and strengthen current and emerging climate change initiatives.
- B) **Listing 'Sea Level Rise' as a Key Threatening Process** and considering the extent of impacts on biodiversity and, need to develop and support efforts to ameliorate those impacts for inclusion in a Threat Abatement Plan.

Threat Abatement Plans offer an opportunity to identify and prioritise national work on research and management activities, in particular on essential data needed to assist decision making with regards to climate changes, sea level rise and protection of environment and biodiversity.

The following outlines the detail to these issues, noting this is also South Australia's response to Q19 in the final section of the submission.

A) LOSS OF CLIMATIC HABITAT CAUSED BY ANTHROPOGENIC EMISSIONS OF GREENHOUSE GASES AS A KEY THREATENING PROCESS

In 2001, the Australian Government listed *Loss of Climatic Habitat Caused by Anthropogenic Emissions of Greenhouse Gases* as a key threatening process (KTP) under the EPBC Act. The Minister at the time decided, on advice from the Threatened Species Scientific Committee, not to create a threat abatement plan.

There are a number of cross-jurisdictional initiatives underway that seek to address the impacts of climate change on habitats and species. These include:

- The development of an Action Plan to implement the Council of Australian Government's *National Climate Change Adaptation Framework*.
- The Natural Resource Management Ministerial Council's *Biodiversity and Climate Change Action Plan (2004 – 2007)*.
- Three projects being carried out under the auspices of the Natural Resource Management Ministerial Council, namely:
 - *Strategic Assessment of the Vulnerability of Australia's Biodiversity to Climate Change*
 - *A study on the assessment of the impact of climate change on the National Reserve System*
 - *A national case study to integrate climate change into the management of disturbance regimes, using fire as an example, in areas managed for biodiversity conservation.*

The South Australian Government supports these efforts, but whilst they will increase the capacity of habitats and species to adapt to the impacts of climate change, the South Australian Government considers a threat abatement plan under the EPBC

Act could provide an effective mechanism, backed by legislation, to consolidate and strengthen current work. And while the Action Plan being developed to implement the COAG Adaptation Framework is multi-sectoral in its approach, a threat abatement plan could comprehensively and exclusively address the threat of climate change to habitats and species.

There have been considerable advancements in our understanding of the potential impacts of climate change on habitats and biodiversity since the Threatened Species Scientific Committee formed its advice in 2001 to not prepare a threat abatement plan. The fourth assessment report of the Intergovernmental Panel on Climate Change (IPCC) released in 2007 indicates that over the next century, human-induced climate change will alter the structure and functioning of most ecosystems and compromise the services they provide.

Australian species and climate change, a publication released by World Wildlife Fund Australia on 25 March 2008, reports that many of Australia's threatened species face extinction due to climate change. The same message is conveyed in the CSIRO report *Implications of climate change for Australia's National Reserve System: a preliminary assessment* released on 31 March 2008.

While it is acknowledged that only international action can abate greenhouse gas emissions, the South Australian Government considers that it is possible to plan for effective national action to address the threat of habitat loss and build the adaptive capacity of species and ecosystems.

The Commonwealth and other jurisdictions should work together to identify the research and management activities to be included in a threat abatement plan. This would need to take into consideration the findings of the *Strategic Assessment of the Vulnerability of Australia's Biodiversity to Climate Change*, which are yet to be released; the national priorities identified in the Action Plan to implement the National Climate Change Adaptation Framework; the review of the *National Strategy for the Conservation of Australia's Biodiversity*, due to be completed by mid-2009; and the research work being undertaken by the CSIRO Climate Adaptation National Research Flagship. It will also be important to consult widely during preparation of the threat abatement plan, including with the general community, landholders, business and industry.

B) SEA LEVEL RISE AS A KEY THREATENING PROCESS

The South Australian Government considers that the threat of sea level rise should also be considered by the Commonwealth as a KTP.

In South Australia, around 85% of the population lives within 50km of the coast. In addition to accommodating the bulk of the country's human population, coastal areas support other important activities and natural features, such as: infrastructure, agriculture, fisheries, tourism, other recreation, wetlands and estuaries, mangroves and other coastal vegetation, coral reefs, heritage areas and threatened species or habitats.

The likely impacts of climate change will increase the challenge of sustainable management of the coastal zone. Current coastal development patterns may be increasing coastal vulnerability to climate change. There is potential for considerable damage to low lying coastal settlements and infrastructure, affecting large and growing populations, tourism and capital investments, as well as sensitive ecosystems, such as mangroves, salt marshes and sand dunes, from sea level rise, flooding, rising groundwater with increased salinity, and erosion.

The following impacts are likely to be associated with sea level rise¹:

- Increased coastal erosion;
- Increased inundation of coastal wetlands and lowlands;
- Increased risk of flooding and storm damage;
- Increased salinity of surface and ground waters;
- Rising groundwater levels with the potential to threaten development;
- The retreat of salt-marsh and mangroves with sea level rise and their loss where retreat is not possible;
- Increased risk of damage to coastal housing and infrastructure;
- Increased intrusion of salt water vegetation into freshwater ecosystems in coastal areas; and
- Loss of estuarine/coastal species and communities.

South Australia is addressing the threat of sea level rise through:

- The Planning Minister, in 1994, authorised the *Regional Coastal Areas Policies Amendment*, which added provisions to Development Plans across the State, including a provision which requires consideration of sea level rise induced by climate change.
- The SA Coast Protection Board (CPB) has a range of policies designed to address, amongst other matters, development, coastal hazards and protection works.
- The CPB has established a Sea Level Rise Advisory Committee to conduct a review of existing sea level rise policy: This will take into account the latest IPCC projections of sea level rise.
- The recently completed Inquiry into Coastal Development by the South Australian Parliament's Environment, Resources and Development Committee. The Committee recommended that the Government explicitly considers climate change and sea level rise in all aspects of planning, development and assessment.
- Current work on Development Plans is ensuring that sensitive coastal features will be included in coastal zones

By proposing that sea level rise be listed as a key threatening process, further consideration would be given to the extent of impacts on biodiversity and the development and support for efforts to ameliorate those impacts for inclusion in a Threat Abatement Plan.

More information is available in the South Australian Government's submission to the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts inquiry into climate change and environmental impacts on Australian coastal communities.

<http://www.aph.gov.au/house/committee/ccwea/coastalzone/index.htm>

¹ IPCC: 0.18 - 0.59m by 2100, with a possible additional contribution from ice sheets of 10-20cm, and further ice sheet contributions might substantially increase the upper limit)

RESPONSE TO QUESTIONS LISTED IN DISCUSSION PAPER

Scope of the Act

Q1 What are your views on the following aspects of the Act:

- (a) Are the objects of the Act appropriate to the Commonwealth's role in environment protection and management?

The objects of the Act are considered appropriate, however it is recommended that the objects be modified to specifically provide for the protection, and where practicable, the restoration and/or recovery of the environment, especially those aspects of the environment that are matters of National Environmental Significance (NES). This is a particularly important plank for climate change adaptability and resilience.

- (b) Are the principles of Ecological Sustainable Development (ESD) appropriate to the Commonwealth's role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?

A central focus of the EPBC Act is on environmental protection and biodiversity conservation and cooperative approaches to protection and management of the environment. While ESD principles are appropriate to the Commonwealth's role and are in line with the National Strategy for ESD, there is a need for transparency on how the Minister or his delegates incorporate ESD considerations in the decision-making process. Based on the development application model used in South Australia, a proposal would require more detail on other social and economic considerations. These provisions are not available in the current EPBC Referral forms.

- (c)(i) Are the existing matters of national environmental significance (NES) appropriate?

The Review may wish to have regard to the *Review of regulatory efficiency in uranium mining* conducted by the Department of Resources, Energy and Tourism as part of the Uranium Industry Framework.

- (c)(ii) Do you think that there should be any additional matters of NES, and if so, how should such matters be framed?

No comment

- (d) Is the definition of an 'action' in the Act appropriate?

The definition of an 'action' in the Act is considered appropriate, however, there is a need to increase the general awareness and understanding of the terminology and interpretation of the term "action" to assist in its application.

- (e) What kind of impacts should be considered under the Act? Does the Act adequately encompass not just direct but also indirect impacts?

While the EPBC Act currently has the capacity to consider indirect and cumulative impacts, these considerations can be complex and present a challenge to both proponents and decision-makers. Ignoring cumulative impacts on an ecosystem and/or impacts at the broad scale places a greater risk of not achieving ecologically sustainable outcomes. Efforts are needed to improve awareness and understanding as to why identifying cumulative impacts is important to the decision process.

Given indirect impacts can be difficult to quantify when planning developments and some types of indirect impacts can be poorly understood, ways to assist proponents (or their consultants) to identify indirect impacts would be valuable. Examples of indirect impacts include the spread of weeds and phytophthora, increased risks of fire, affects on drainage and other hydrological features, increased risk of predation due to provision of perches for raptors and owls or attraction of cats/foxes/dogs).

Assistance to proponents to ensure these impacts are addressed in referrals could be via direct Department of Environment, Water, Heritage and the Arts (DEWHA) assistance and advice, increased awareness programs and targeted information, for example by providing data on the EPBC website regarding the extent of habitat for NES species and communities affected.

See response to Q19 for issues relating to climate change impacts.

- (f) Does the test of significance, in the context of actions having a 'significant' impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

Applying the test of significance is often raised as problematic by both proponents and state agencies involved in the commenting phase. This is justifiable given it requires judgement and consideration of the particular circumstances. Continued effort is required to help proponents, private and public, to understand the term 'significant impact' and to assist them to determine whether an action will have a significant impact.

The *Significant Impact Guidelines* need to be applied consistently to provide certainty and ensure documentation requirements and delays are not imposed on proponents unnecessarily. Some of the inconsistency appears to come from a lack of DEWHA staff familiarity with the site and the project. Desirably DEWHA staff should inspect the project prior to making a decision or declaring a controlled action and before seeking further documentation which may not be necessary.

It is recommended that criteria be developed to enable proponents to determine whether an impact will be significant. As an example, the South Australian Petroleum Act model contains criteria for assessing environmental significance as

² Guideline in the use of PIRSA Environmental Significance Criteria:
<http://www.pir.sa.gov.au/petroleum/legislation/regulation/level>

³ Environmental Significance Assessments (ESA) for all Environmental Impact Reports:
http://www.pir.sa.gov.au/petroleum/environment/register/se0,_eir_and_esa_reports

part of the environmental approval process². These criteria provide an auditable and transparent assessment process for Primary Industries and Resources SA (PIRSA) decision-making to other agencies and stakeholders. The environmental significance assessments carried out by PIRSA using these criteria are publicly available on PIRSA's web based environmental register³.

Assessment and Approvals

General comments

a) Timeframes & more flexible 'fit for purpose' arrangements

Timeframes for commenting on referrals under the EPBC Act need to be consistent with State and Commonwealth policies on red tape reduction, assessment streamlining and COAG reforms relating to planning and assessments. At the same time, timeframes need to allow for due diligence and adequate consultation in the assessment and approvals process.

The quality of referrals submitted under the EPBC Act varies greatly and it is inevitable that those of a low standard can be delayed while DEWHA seeks additional information. Efficient assessment and approval processes rely on a high standard of information being available, quality referrals and a quality assurance process to vet the referrals. DEWHA require appropriate resources, holistic checklists and excellence in assessment process to manage these referrals.

The multi-stage referrals process can be lengthy and cumbersome. The process could be streamlined for larger developments likely to be controlled actions, allowing proponents to submit a referral and a completed Environmental Impact Statement at the same time. This would require proponents to complete a comprehensive environmental assessment upfront, whilst also allowing them to streamline their approval.

Consideration should also be given to creating a process for 'in principle' approvals. Some projects may still be a concept design when referral is submitted. Such projects may not be able to provide a detailed design without on-ground preliminary investigation (potentially requiring a referral). Under the current provisions of the Act, no staged (or similar) approval can be given for preliminary works so a detailed design can be submitted at a later date. It is acknowledged that the provision of 'in principle' approvals would create difficulties for assessing cumulative impacts and guidelines would need to be developed to ensure these impacts are still adequately considered.

There is need for a mechanism to allow for timely amendment of the assessment guidelines in the case of new information becoming available or the state of the environment changing.

A review of statutory timeframes should be undertaken, specifically to include timeframes once the clock has stopped (in the assessment of a referral). The proponent has no certainty of timeframe once the clock has stopped, nor in the reconsideration process, once a referral decision has been made.

Timeframes relating to critical projects associated with public water supply and other essential human needs are not always appropriate for projects such as emergency drought proposals relating to the Coorong and Lower Lakes in South Australia and South Australia's water supply. The current statutory timeframes

warrant a review and may also be a point of interest in the COAG Infrastructure Working Group's investigation into greater uniformity in approvals for major national infrastructure.

Delivery timeframes for Commonwealth funded or sponsored projects need to take into account Commonwealth legislated timelines for EIA. There can be pressure to get Commonwealth projects underway by a certain date in order to keep the project funding. However, there is often no consideration of approval processes and timeframes required under the EPBC Act when setting these project dates.

The due diligence process under the EPBC Act should include a mechanism to renegotiate project timelines for Commonwealth funded projects based, if warranted based on a risk assessment.

b) Crown development and public infrastructure

Further investigation is needed to consider more appropriate impact assessment arrangements for Crown developments, particularly emergency works and other vital public infrastructure. The Review could also consider an approach similar to the South Australian *Native Vegetation Act* which provides exemptions for certain actions, such as infrastructure in the public interest, subject to provisions such as an approved Standard Operating Procedure or equivalent. The Review will need to be mindful of the current work in hand in this area by the Council for Australian Federation and the COAG Infrastructure Working Group.

c) Compensation - project delays

There is a need to reconsider the current circumstances in which delays in project approvals due to processes under the EPBC Act do not allow for compensation or consideration of the financial implications and investment decisions for developers.

d) Additional referral requirements– further guidance

As part of a recent referral to DEWHA made by SA Water, DEWHA requested a 'Threatened and Migratory Species Management Plan' and a 'Groundwater Monitoring and Adaptive Framework' plan be submitted. However, minimal guidance/examples were provided as to what should be included in these plans. If similar management plans are expected with referrals in the future, there is a need for the development of guidelines on how to write such plans and what information should be included in them. This will ensure that the proponent has every chance to submit the required information to DEWHA within a timely and efficient manner.

e) Use of State expertise

Given the Commonwealth's reliance on State and local expertise in the assessment process, there is an ongoing need to review the resource implications and appropriate responsibilities. Bilateral agreements for example can have provisions to ensure appropriate compensation for particular works done by the States and Territories. However, there are many other areas that are yet to be fully analysed and costed.

Q2 Does the public understand their responsibilities under the Act to refer proposed actions to the Minister?

a) Lack of awareness

While the operation of the EPBC Act is coming up to 10 years, there is still a lack of general awareness and understanding within the community and in areas of government that do not have regular involvement in EPBC processes. More effort is required to educate people about their responsibilities under the EPBC Act. In general, the public and local planning authorities appear to have a limited knowledge of what constitutes a 'significant' action (see Q1(f)), and when to refer actions to the Minister. The concept is further complicated by the fact that development assessment processes are generally arranged by the relevant local/state planning authority, who may not require the proponent to make this distinction and initiate the referral process.

The public are more inclined to understand their responsibilities under State planning legislation, but generally do not understand their responsibilities under the Commonwealth EPBC Act.

The EPBC Act would benefit greatly from a publicity campaign that educates people (including developers and consultants) about its purpose and its triggers for referral. DEWHA should continue to expand on the information provided on the EPBC Act website with respect to the assessment and approval processes, listed species, recovery plans etc, as this is very helpful in identifying potential impacts and approval processes.

b) Need for clearer information eg listings marine species

Understanding responsibilities can also be assisted by eliminating areas of confusion. For example, the EPBC Act currently lists seven matters of NES, including listed threatened species and migratory species. However there is some confusion concerning the status of listed marine species that occur in State lands or State waters.

If a proponent undertakes an EPBC Act Protected Matters Report they receive a list of threatened species and migratory species that may occur in the project area. Migratory species will be divided into migratory terrestrial species, migratory wetland species, migratory marine birds, migratory marine species, and sharks. The Protected Matters Report will list "Other matters protected by the EPBC Act", and includes listed marine species.

Despite the explanation on the report that listed marine species relates to the environment on Commonwealth land (and not to State land), many proponents include listed marine species under the category of migratory species.

It would be useful if the EPBC Act Protected Matters Report was structured under the same headings as the referral form, hence eliminating the confusion between migratory species and listed marine species.

Q3 Are appropriate projects being referred for approval? Does the referral process meet the objects of the Act?

a) Projects not referred

While there is little evidence to support an argument that projects are not being referred, there are opportunities to strengthen the links between the State and Commonwealth assessment processes to ensure local projects are appropriately and efficiently dealt with under both approvals systems. South Australia has been working with DEWHA on practical arrangements, for example, in relation to water licensing.

Further effort is needed to:

- work more closely with local government authorities and on opportunities for links between systems
- foster and maintain good working arrangements and clear communication channels to ensure that local and regional staff and community groups feedback timely information on projects that may not be meeting approval requirements.

b) Non referrals

Some proponents will consider matters of NES as part of their project planning and decide that it does not warrant a referral as the risk to any matters of NES is low. The South Australian Government has, in some cases, adopted an approach in which the risk assessment is discussed with DEWHA in the planning stages and early agreement is made that a referral is not warranted. This arrangement could be encouraged and formalised whereby DEWHA could scrutinize the documentation prepared by the developer and provide a quick response by either agreeing or disagreeing with the developer's conclusion, giving the developer confidence to proceed with project development.

c) Reviewing the need to refer, eg Seismic surveying

Seismic surveying is a well known and regularly occurring exploration activity. It has been the subject of extensive environmental evaluation and assessment over many years. One of the key potential impacts is the interaction of seismic sources/activities with whales. DEWHA has issued a policy statement (EPBC Policy Statement 2.1 (2008)) which covers this situation. There are sufficient management practices within this document to ensure that seismic surveying is not likely to have a significant impact on whales or any other matter of NES. The policy document is strategic in nature and is underpinned by substantial scientific evidence and evaluation.

Most marine seismic surveys are referred under the Act by proponents even though the actions are unlikely to have a significant impact on matters of NES; particularly whales, marine environment and other migratory species. Most referrals are determined not to be controlled actions if the action is taken in a prescribed manner. Usually this prescribed manner is in accordance with the EPBC Policy Statement 2.1.

Guidance should be provided to the petroleum industry to the effect that if the action is proposed to be undertaken in accordance with Policy Statement 2.1, then referral under the EPBC Act would not normally be expected in relation to whale interaction. This would substantially reduce the red tape associated with 'routine' operations, particularly as all offshore petroleum activities are separately assessed and approved under the Offshore Petroleum Act 2006 (SA) and associated Management of Environment Regulations 1999.

Further work in this area would also be linked to the use of more strategic approaches under relevant EPBC provisions. New strategic assessment approaches and self-regulatory objective-based approaches will need to have the appropriate checks and balances in the process to ensure the same level of protection to matters of NES.

d) Prescribed types of development

Some recurring types of development (e.g. windfarms) are thought to generate 'generic' impacts that are considered to be well known and understood. Under the legislation there should be some consideration given to fast-tracking prescribed types of development.

- Q4 Do you think that the Act contains an effective hierarchy of environmental assessment approaches, ranging from assessment on referral information to assessment by public inquiry? Are the methods of assessment providing the required information for informed approval decisions?

No comment

- Q5 Does the Act provide appropriate scope for public participation and transparency in the assessment and approval process under the Act?

Electronic improvements

The EPBC Act web site (<http://www.environment.gov.au/epbc/notices/index.html>) allows for members of the public to view the EPBC matters that are open for public comment. However, there are a number of electronic means in which public participation and transparency could be enhanced, ie

- providing a central location where a person can view all matters open for public comment as opposed to the current system where there are numerous pages on the EPBC web-site that must be checked, e.g. referrals, species and ecological communities nominations, draft recovery plans, threat abatement plans, heritage nominations etc.
- an e-mail alert system could be established where e-mails are automatically sent to registered users advising them of new matters open for public comment. Registered users could nominate if they would like to receive state specific referrals as well as various categories of notices.

- Q6 Does the Act operate effectively in conjunction with State and Territory planning and environmental impact legislation? Are existing bilateral agreements achieving the objects of the Act?

Refer also to SA's policy and legislative framework in **Attachment B**

The South Australian Government inserted provisions into legislation to minimise areas of duplication between State legislation and the EPBC Act, viz provisions:

- to allow the use of documents prepared for EPBC Act purposes and procedures followed for EPBC Act purposes that meet the substantive (though not necessarily form) requirements of the State legislation to be used in State assessments.
- for a State decision maker to heed any conditions that have been attached to an approval under the EPBC Act, and consider whether conditions to be imposed under the State legislation should be consistent with those conditions.
- for a State decision maker to impose a condition requiring compliance with the EPBC Act conditions (or some of them).

Resource development

In South Australia, regulated exploration, development and production activities for petroleum, geothermal and mineral resources are required to abide by all relevant State and Commonwealth legislation for the protection of natural, social and economic environments, including and not limited to, the objectives for the EPBC Act.

State and Commonwealth agencies have worked in collaboration to develop clarity in the assessment and regulation of mining proposals. This collaboration enabled the development of guidelines outlining the requirements for assessment documents in both jurisdictions, thus improving clarity. This has allowed proponents to develop a single set of assessment documents that satisfy the requirements of both jurisdictions.

Although documentation must be assessed by both jurisdictions, efforts have been made to ensure these assessments are conducted in parallel so that the same schedules can be followed. This has been found to be particularly important when consulting with the community on proposals.

To date, assessment of mineral related processes has been conducted on a case by case basis as there have been few such assessments required.

Major developments

The recently signed Bilateral Agreement accredits the South Australian Major Development assessment process conducted pursuant to Division 2 of Part 4 of the South Australian *Development Act 1993*. A number of joint and parallel assessments have been run which have 'road tested' the arrangements successfully.

Prior to the Bilateral, arrangements were in place to ensure major developments were assessed collaboratively and using the same documentation.

Further bilateral agreements and other accredited processes

The process for developing bilateral agreements needs to be simplified, clearer and better supported by Commonwealth resources so that the establishment of such agreements with States/Territories can be attractive and, where feasible, accelerated. Clear guidelines about which process should be undertaken are needed so there is no ambiguity in the level of detail and effort to be put into the development of bilateral agreements.

There is scope for further bilateral agreements to be established with State and Territories and other accredited processes in relation to planning and environmental impact legislation. For example:

- Given the standards for activities and outcomes set out in the *Petroleum Act 2000* (SA) and the *Mining Act 1971* (SA) are consistent with the standards for outcomes specified in the EPBC Act, it is likely that the assessment and approvals processes could be accredited under the EPBC Act and result in further efficiencies and effectiveness of the co-regulation of the upstream petroleum, geothermal and minerals resources sector.
- In offshore petroleum exploration, the South Australian Minister for Mineral Resources Development is the Designated Authority for the *Offshore Petroleum Act 2006* (previously the *Petroleum (Submerged Lands) Act 1967*). There are stringent requirements under this Act for environmental management. Most marine petroleum exploration activities are referred under the EPBC Act by proponents even though they are separately assessed and approved under the *Offshore Petroleum Act 2006* and associated *Management of Environment Regulations 1999*. A similar bilateral approach should be considered for the *Offshore Petroleum Act 2006*.
- Accreditation of processes applying to 'Crown or Public Infrastructure' activities assessed under Section 49 of the *Development Act 1993* or through formal processes required by the Department for Transport, Energy and Infrastructure would increase the efficiency and effectiveness of delivering major infrastructure projects while also meeting the objects of the EPBC Act. The processes are similar to those accredited under the bilateral agreement for activities under Section 46 'Major Developments' of the *Development Act 1993*.

Q7 Are there further opportunities to harmonise the Act with other State and Territory legislation,

The South Australian Government submission to the Senate Inquiry highlighted opportunities to improve the interrelationship of the EPBC Act objects with State planning processes. Further work in this area is earmarked as part of South Australia's response to COAG regulatory reforms, namely in more strategic approaches and additional areas for inclusion under Bilateral Agreements.

The opportunities exist to look for better synergies between Commonwealth legislation and State/Territory legislation and to ensure there is consistency in assessment of projects and no duplication of responsibility. It is, however, important to determine clearly defined legislative responsibility and to ensure that responsibilities are not devolved without the proper consideration to adequate

resources across the spectrum of roles, including assessment, monitoring and evaluation, auditing and compliance.

There is a need to harmonise the EPBC Act with the South Australian Native Vegetation Act particularly in relation to offsets. The offset requirements under the EPBC Act are currently unclear, and it would be appropriate that where the same species/communities are affected that the offset requirements be the same under both Acts. The EPBC Act should also be amended to ensure consideration of the offset decision under either Act be recognized in the assessment, as such offsets may significantly reduce or ameliorate the impact.

Planning and approval processes

Q8 Does the use of strategic approaches, such as strategic assessments and bioregional plans, provide opportunities for streamlining Commonwealth involvement in environmental issues?

A primary theme of the South Australian Government submission to the Senate Inquiry was to promote the uptake of strategic assessments and bioregional plans.

The use of strategic assessment and bioregional plans has the capacity to streamline considerations of EPBC related matters, while also providing certainty to developers and may assist in reducing financial impacts for a proponent. It would be beneficial for EPBC matters to be dealt with by taking a strategic approach, for example, EPBC matters could be identified in Planning Strategy volumes, regional natural resources management (NRM) plans and associated water allocation plans and local government development plans. This would be particularly useful for the land use planning system as it would provide decision makers and developers with information early in the planning process, as well as providing the opportunity to deliver positive outcomes for the environment and development. South Australia is currently developing a similar process for dealing with native vegetation issues, as a part of the State's Planning Review.

Strategic approaches allow for a preventative approach to environmental protection but have not been used to date. Given the imperative for landscape-scale adaptation to climate change, consideration about the appropriate use of these provisions is needed. There is the potential for strategic assessments to be applied to a wide array of issues, however, the process for undertaking strategic assessments are not well understood and would also benefit from pilot and/or desktop studies.

For example, PIRSA Aquaculture has previously discussed the potential for Aquaculture Zone Policies established under the *Aquaculture Act 2001* (SA) to undergo a strategic assessment so that activities undertaken in accordance with the policy would be unlikely to have a significant impact on matters protected by the EPBC Act. There is a lack of understanding regarding the process the zone policies should go through to be accredited. If a better process could be developed there would be opportunities for other state-based management tools to go through the strategic assessment process and it may significantly decrease the number of projects referred under the EPBC Act.

Substantive work has been done over many years to finalise a strategic assessment for exploratory activities relative to the EPBC Act. In addition, there has been extensive work done to prepare a revised set of guidelines for managing

the interaction between seismic exploration and whales (EPBC Act Policy Statement 2.1). Both these instruments have been the subject of a large amount of scientific input and community and industry engagement.

Even so, there appears to be a reluctance to put faith in these documents as a basis of approval, with many proposals being subject to additional requirements in referral decisions under the EPBC Act. There appears to be no scientific rationale for these additional requirements compared to the scientific knowledge that went into Policy Statement 2.1 or the strategic review. Such an approach precipitates a substantial sovereign risk to explorers, and is a significant impediment in a global market that is already highly competitive.

Do such approaches provide an appropriate means for dealing with cumulative impacts?

As referrals are often currently assessed on their impacts on matters of NES in isolation, there is a risk that their cumulative impacts, particularly impacts at a landscape scale, are not being identified nor considered in the assessment process. The effectiveness of the current policy tools and provisions to identify and manage the cumulative impacts of actions should be further explored. Adopting a landscape approach may provide some guidance to further address this issue.

Most projects are located in areas where no strategic assessments or bioregional plans have been developed. This creates difficulties in assessing likely cumulative impacts. There is a need for 'Guidelines to assess cumulative impacts at a project level' or similar, particularly where there are no strategic assessment/bioregional plans available.

Further, a mechanism for understanding cumulative effects of development at the start of a project could be developed that assist the development industry to better understand and deal with cumulative impacts that could trigger the EPBC Act.

Biodiversity

Q9 Does the Act provide an effective regulatory framework for the conservation of Australia's biodiversity? If not, what improvements could be made?

The *National Biodiversity Strategy*, currently under development, should be used to provide direction to help identify and resolve gaps and inconsistencies between the current objects of the EPBC Act (in particular 'promotion of the conservation of biodiversity') the identified matters of NES, and activities conducted under the Act.

As recommended in South Australia's submission to the Senate Inquiry, the Commonwealth needs to adopt a more systems-based, landscape-scale approach to biodiversity conservation, particularly ensuring that national biodiversity objectives and targets are integrated into jurisdictional land-use planning. The role of the EPBC Act in facilitating better integration of conservation with other land uses, particularly through development planning, should be explored (refer also to the response to Q15).

Achieving the 'lose no species' target set by the South Australian Government requires comprehensive conservation action at a variety of biological scales, including targeted actions on species and communities, and broader conservation

measures at a landscape scale. Interpreting the object of the EPBC Act 'to promote the conservation of biodiversity' to cover all elements of biodiversity provides a similarly broad and ambitious scope. The current focus of the EPBC Act's matters of NES is on species and ecological communities and should be broadened to include the landscape scale requirements of matters of NES (e.g. landscape scale requirements of a threatened species) or landscape scale actions to achieve broader biodiversity benefits. This gap at the landscape scale is likely to be impacting on the extent to which the EPBC Act can meet its object to promote biodiversity conservation.

Improvements also need to be around acknowledging the need for restoration/rehabilitation of habitats, communities and ecosystems, to slow and hopefully halt ongoing rates of decline and to help affect recovery of many species.

In particular, the need for, and role of, strategic large-scale ecological restoration to recover current 'extinction debts' and to improve resilience of species in light of climate change, needs to be addressed.

Conservation Agreements also offer an important part of the framework. However, as raised in the response to Q35, current arrangements need improvement.

Q10 What are your views on the process for nominating threatened species, ecological communities and key threatening processes?

The listings process for threatened species could be improved by:

- consulting with States on the strategic assessment approaches that have been (or will be) prepared to determine priorities for listing.
- Ensuring that DEWHA use the same data sets as the States in order to prepare national listing priorities to ensure consistency with State legislation.
- Avoiding inconsistencies in taxonomic names being used.
- Regularly assessing listings to determine if a formal review and revision is necessary.

The nomination process allows any person in the community to nominate a species or process at the invitation of the Minister. A significant workload is then placed on the Threatened Species Scientific Committee (TSSC), DEWHA, industry and state management agencies to respond to these nominations. There needs to be a pre-assessment step added to the process to identify nominations that are not suitable/justified for listing as threatened.

The process which allows for repeated nominations should be reviewed. In the case of Southern Bluefin Tuna (SBT), the species has been nominated at least three times even though there is a SBT strategic assessment accredited under the EPBC Act and a formal management plan for the species. Each nomination results in many hours of work being invested by industry and management agencies to address the nominations. This is not a cost effective or efficient process. One option would be a limitation period before a species can be re-nominated following a decision not to list. For example, no further nominations to be considered within five years of a failed nomination for the same species. However, there needs to be some allowance for a repeat listing if a new threat is identified or new information becomes available.

The legislation appears to allow the TSSC the ability to vary the nomination from whatever may have been put forward initially. For example, someone could nominate a species for inclusion as conservation dependant and the industry, state management agencies, may provide an extensive response to that nomination. However the TSSC may then decide to recommend a higher level listing to the Minister without other relevant parties commenting on the changed nomination. Greater transparency would assist the understanding of these changes and decisions.

The nomination process may take many years and is far too long after submissions are in. There should be set timeframes for assessment of nominations.

- Q11 Given the length of time required for the assessment of nominations, should the Act allow for the emergency listing of species and ecological communities which may be threatened (similar to the provisions for the emergency listing of National Heritage places)? Would the advantages of this be outweighed by the financial and administrative costs?

Emergency listings should be possible. Biodiversity costs should be the paramount consideration for this process. If there are financial and administrative cost concerns then the process needs to have clear guidelines as to how requests for emergency listings will be assessed.

- Q12 What matters should the Minister consider when deciding whether to list a threatened species or ecological community?

The increasing urgency associated with climate change and other emerging pressures requires urgent and collaborative efforts. (Refer also to the response to Q19)

The Minister's major consideration must relate to its survival for current and future generations. However, it is acknowledged that Minister needs to be aware of the triple bottom line (TBL) implications of listing a species, for example, the Southern Bluefin Tuna would have significant social, economic and employment impacts on some rural areas of the State.

TBL assessment is therefore a vital aspect of strategic management plans for species to ensure the appropriate level of effort.

- Q13 Are the categories of threat appropriate?

The EPBC Act criteria are essentially based on the International Union for the Conservation of Nature (IUCN) Red List Categories and Criteria. These criteria were developed primarily for terrestrial species. It may be appropriate to review them in relation to marine species.

Q14 Are there opportunities to reduce duplication between the Commonwealth and State and Territory listing regimes or do overlaps between the regimes provide significant protection for threatened species and ecological communities?

State and Territory assessment and listing processes have greater capacity (sensitivity) for detecting changes in status and / or in rates of local change, than the EPBC Act. However, both levels of assessment are still warranted and necessary.

The delisting process for species should be reviewed to ensure consistency between State and Commonwealth threatened species registers. For example, the EPBC Act referral for the Sturt Highway Project (EPBC Reference 2008/4502), required a further information request regarding a species (Flinders Ranges worm lizard) that has been delisted under State legislation as it is no longer considered threatened, but has not been delisted under the EPBC Act. Addressing issues at a project level that could be better addressed at a listing level puts unnecessary, and significant, costs on the proponent.

Q15 What factors should be considered in setting priorities for recovery planning?

There is an increasing need to focus on informing and educating the community about threats and risks to biodiversity and about what key actions need to be implemented to slow, halt and reverse the ongoing declines of habitat conditions and species populations.

There are opportunities for the Commonwealth to work with state and regional bodies on ways to incorporate recovery plans for threatened species and communities within their regional plans. This work could include landscape scale planning to improve the inclusion of more species (not just threatened and not single species).

Consideration should be given to potential future conflicts with future economic development. For example, in areas where urban development is likely to occur there should be investigation and implementation of buffer zones and areas for habitat retreat to mitigate the impacts of both development and climate change. While in activities such as resource extraction, consideration needs to be given to examining the range of known and potential interactions between species and the activity; the potential impacts on business and investment arising from any recovery actions; the potential use of environmental offsets and other habitat development or protection programs; and measures addressing short to long term conservation priorities.

Q16 Does the planning regime support the effective recovery of threatened species and ecological communities?

For most threatened entities, decline has happened over many decades and may still be occurring. Thus expectations need to be set around a staged approach to recovery planning which includes (i) slowing, then (ii) halting and then (optimistically) affecting (iii) recovery. Measurable rates of slowing and halting of decline should be seen as successful stages in such processes, and should also be seen as a more realistic approach to planning. Concerns about lack of effective recovery should be framed in terms of these other two stages before they become critical.

The effectiveness of both State Regional Recovery Plans and National Recovery Plans can be variable through circumstances such as a focus on single species plans without any resources to implement any of the actions or a National Recovery Plan providing guidance but without a commitment to implementation. In addition, some of the recovery planning language can promote unrealistic expectations and may not accurately reflect the long timeframes necessary to get measurable recovery. Continued effort is needed to ensure Recovery Plans are workable, contain realistic targets and are adequately resourced.

Q17 Are there opportunities to improve the co-ordination between the Commonwealth and State and Territory recovery regimes? If so, what might these be?

There is a need to simplify planning, plan implementation / project management, and progress reporting where threatened entities (or other matters of NES) occur across two or more jurisdictions and/or across two or more NRM regions. In particular, budgets and lines of reporting need to be streamlined or minimised as much as possible.

Other options could include: continuing National Recovery Teams which focus on a suite of species and work on integration across borders; recognise Regional Recovery Plans and bring together with other State/Territory recovery plans; and the Commonwealth could assist with coordination of research, planning, plans and on-ground work.

Q18 Are the provisions of the Act for the protection and recovery of threatened species and ecological communities, migratory species, listed marine species and cetaceans effective? What alternative approaches might be available?

The effectiveness of the Act is significantly limited by many threatening processes, such as the over use of water in the Murray Darling Basin and other areas and the global issue of climate change: both of which are having an irretrievable impact on species and ecological communities protected under the Act.

Generally the provisions are reasonable for protection at a smaller scale. However, there are significant pressures that require more adequate resources, including keeping up with appropriate levels of compliance, and being able to address all issues required from a recovery point of view.

There is also a need and opportunity to apply more appropriate scales to both planning for major threats and for implementing actions (refer to the SA Government submission to the Senate Inquiry). While the planning and strategy aspects are far from complete, it is important and timely to ensure there is an increasing emphasis on on-ground actions.

Q19 Does the Act provide an appropriate legislative framework for addressing climate change and other emerging pressures in the context of environmental protection and biodiversity conservation? If not, how can such matters be considered when making decisions under the Act?

There are a number of opportunities and options in which the Act could be better used to deal with 'emerging pressures', namely:

- 1) **Strategic Approaches:** provisions under the EPBC Act allow for joint strategic planning and approvals processes associated with land-use and natural resource management decisions. Work to progress more strategic approaches should be accelerated and focussed on 'emerging pressures',
- 2) Developing a **Threat Abatement Plan for the Loss of Climatic Habitat Caused by Anthropogenic Emissions of Greenhouse Gases** which is currently listed as a key threatening process (KTP) under the EPBC Act.
- 3) **Listing 'Sea Level Rise' as a Key Threatening Process.**

The development of Threat Abatement Plans for 2) & 3) offer an important and timely opportunity to identify and prioritise national work on research and management activities in particular on essential data needed to assist decision making with regards to climate changes, sea level rise and protection of environment and biodiversity.

More details on 1) are provided in the SA Government submission to the Senate Inquiry (refer to **Attachment A**) and 2)- 3) are provided in earlier section.

Water scarcity

Water resources that are confined within State boundaries are best managed at the State level and under existing regulatory processes. However, further consideration should be given to improve current EPBC Act arrangements to cover water resources that cross state boundaries, such as the Murray Darling Basin, Great Artesian Basin. For example, downstream states could be formally invited to comment on upstream proposals, such as new water infrastructure.

Special consideration should also be given to the impact of climate change on such resources. Particularly where long life infrastructure and systems are involved (that might continue for 30 to 90 years), the impact of climate change on water resources could be severe in Southern Australia towards 2100, based on the current A1FI Fossil fuel intensive global behaviour. It is therefore important that the impact of developments has been considered in terms of the plausible changes in water availability to the year 2100.

It would also be appropriate to require EPBC referrals to address risks associated with water scarcity and climate change on biodiversity, coastal environments and the needs of business and communities.

New forms of development will need to emerge over the next decade in response to both opportunities and adaptation. At the same time, threats upon key species and communities are likely to be exacerbated due to rising temperatures and sea level rise, which will place pressure upon existing patterns of land (and sea) use. It is important to recognise the need to develop new and to modify existing policy measures to anticipate future challenges and to ensure appropriate arbitration is available where future conflicts arise.

Consultation with the development industry

Any decision to include impacts of climate change should allow for considerable consultation with the development industry to ensure a reasoned and appropriate framework is developed. This would also apply to the introduction of measures for other emerging pressures.

International movement of wildlife

General comments

At the national level, the biosecurity continuum has a number of gaps relating to the environment sector. The EPBC Act may provide an appropriate legislative and procedural vehicle. It would be useful to liaise with the National Environment Biosecurity Committee.

- Q20 Does the Act currently provide appropriate regulation for the sustainable use of wildlife and international wildlife trade?

No comment

- Q21 Do you think that current assessment and decision-making processes for the listing of specimens suitable for live import could be refined and simplified?

a) assessment of environmental standards of imported product

The current assessment process could be refined by including an assessment of the environmental standards and regulations of an imported product. For example, imported product taken from fisheries with lower environmental standards and regulations can be imported and freely sold in Australian markets and compete directly with a more sustainable Australian product. This significantly disadvantages the Australian seafood industry.

b) consistent risk-based approach

The importation of the Savannah Cat was recently banned under the EPBC Act based on the increased risk posed by the traits of the hybrid breed. However for many other species/hybrids/cross-breeds, a similar risk-based approach is not used (eg goat-like sheep species introduced into the rangelands). Further, some species are selected for particular traits and imported into Australia, and then bred resulting in an increased environmental risk.

c) streamlined process: import of biological control agents

Streamlining the processes for import of biological control agents under the Department of Agriculture Food & Forestry/Biosecurity Australia, which run a similar process would lead to a refined and simplified process.

- Q22 What are your views on the effectiveness and utility of wildlife trade management practices under the Act? Do you have any suggestions about how the system could be improved?

Currently, if a fishery is approved for export, it is provided with either a five year exemption or a one year approval of a wildlife trade operation (WTO). It would provide greater certainty for State fisheries agencies and industry if the export approvals and WTO approvals could be streamlined into one type of approval with a consistent timeframe of five years. The WTOs create an administrative burden

that diverts resources from the management of the fishery.

As a general approach, the conditions and recommendations placed on fisheries as part of their export approval should decrease over time as they improve their management arrangements. While acknowledging that issues may arise that need to be addressed, consideration needs to be given to placing fewer conditions on a well-managed sustainable fishery.

- Q23 Are the arrangements between the Commonwealth and the States and Territories for managing the domestic movement of exotic and native wildlife effective and appropriate?

Arrangements for domestic movement of exotic and native wildlife need to be improved, for example, by incorporating environmental risk assessments.

- Q24 Does the Act provide appropriate provisions to ensure that Australia complies with its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

No comment

Protected Areas

- Q25 What factors should the Minister have regard to, when making a decision on heritage listing?

The Minister should have regard to integrity, management and sustainability factors when making a decision on heritage listing. Given the responsibilities of states in managing world heritage areas, it is vital that to develop a bilateral agreement prior to nominating a site for World Heritage Listing.

- Q26 What are your views on the process for nominating and listing Commonwealth Heritage and National Heritage places?

Section 12 of the EPBC Act specifies that a person must not take an action that will have a significant impact on the *values* of a declared World Heritage property. "Values" with regard to current World Heritage properties have not been adequately defined in the Australian context, and in some cases the definition is not precise enough to assist a proponent in determining if a project may impact the values of a heritage place/property.

The uncertainty about *values* may also inhibit potential nominations for heritage places/properties rather than encouraging additional nominations.

While it is understood that future listings may have improved clarity around this point, this issue needs further thinking in much the same way as IUCN and ICOMOS have done for the World Heritage committee.

The EPBC Act should be consistent with the World Heritage Convention and the Operational Guidelines for the Implementation of the World Heritage Convention and states and Commonwealth should determine an agreed definition.

Q27 What are your views on the effectiveness and utility of Commonwealth heritage strategies and management plans for protecting World, National and Commonwealth Heritage values?

A management plan for Naracoorte Caves National Park (Naracoorte Caves World Heritage Area) was prepared under the *National Parks and Wildlife Act 1972 (SA)* and was developed in consultation with, and supported by, DEWHA. Effective management of the site is undertaken by a State agency, assisted by Commonwealth funding for projects that contribute to realising World Heritage values of the park. However, the level of Commonwealth funding varies from year to year and is determined through a competitive process with other heritage sites. The funding disparity can lead to ineffective long-term management of the park.

Some sites are listed prior to having an adequate management plan or protection in place. For example, the Tree of Knowledge was included in the National Heritage List on 26 January 2006, prior to a management plan being implemented. In April 2006 it was poisoned and did not recover. The listing of sites should ensure adequate resources are available for management plans and are in place as closely as possible to the listing of sites.

Q28 Given that the protection and conservation of Australia's heritage is shared between the different levels of government, are there any improvements in the current legislative arrangements that would be of benefit?

The EPBC Act should be consistent with the World Heritage Convention. The "Outstanding Universal Value" of a World Heritage site is an issue that was referred back to IUCN and ICOMOS by the World Heritage committee. A workshop was held and determinations can be found at <http://unesdoc.unesco.org/images/0013/001396/139602e.pdf>

Q29 What are your views on the effectiveness of the operation of the provisions for Ramsar wetlands and the utility of management plans for those wetlands?

Management Plans and Ramsar Plans should be based on an Ecological Character Description (ECD) (Phillips, W. and Muller, K. 2006).

In addition, the provision of necessary tools to assist in assessing impacts to ECD will build the effectiveness of Ramsar wetlands operations. The South Australian Department for Environment and Heritage is currently exploring such tools.

Q30 What are your views on the effectiveness of the operation of the provisions for Commonwealth Reserves and the utility of management plans for those reserves?

No comment

Indigenous Involvement

General comment

DEWHA must consider the capacity, complexity and resourcing issues faced by Aboriginal communities engaged in EPBC Act processes, including the implementation and management of these matters.

- Q31 Are there opportunities to harmonise legislative provisions for the protection of indigenous heritage values? If so, how?

Current State agency practices of informally negotiating and consulting with Indigenous groups are better suited to addressing indigenous heritage issues in a collaborative manner. A legislated process within the framework of the EPBC Act may be more restrictive and may not allow for the flexibility that is needed.

Any proposal to harmonise legislative provisions for the protection of Indigenous heritage values should not duplicate, or add to the timeframes and complexity of, assessment and approvals processes required under state legislation.

- Q32 Does the Act adequately support Indigenous involvement in the preparation of management plans for Commonwealth reserves? If not, what improvements could be made?

No comment

- Q33 Do the processes under the Act facilitate the involvement and cooperation of Indigenous people as owners of knowledge of biodiversity?

No comment

- Q34 Does the Act make adequate provision for Indigenous tradition to be taken into account in decisions made under the Act?

No comment

Compliance and Enforcement

- Q35 Does the Act provide for the appropriate follow-up of environmental assessment and approval decisions, including the monitoring, evaluation and auditing of actions? If not, what other actions could be taken?

a) Actions

Follow up of environmental assessment and approval decisions is critical for improving the understanding of impacts arising from actions/development. The Act should ensure that data from monitoring of development forms an evidence base which can be used to inform the Government's impact assessment for similar projects.

Proposals are also often declared not to be a controlled action if undertaken in a 'manner specified'. The 'manner specified' has not always been clear, meaningful or met the finality principle⁴.

Some of the enforceable conditions attached to earlier EPBC approvals have not been clear and meaningful, nor have they met the finality principle. For example, EPBC Referral 2002/874 (adjacent Ferries-MacDonald Conservation Park) lists six conditions, however there was no time frame detailed on when the proponent should undertake each condition, nor were the conditions quantifiable. This situation has altered in the past few years and conditions imposed have become enforceable.

DEWHA officers need to be trained in developing enforceable conditions and compliance with conditions needs to be enforced to ensure the Act is effective.

Formalisation of the audit/compliance process is needed to ensure that once an audit had been undertaken there is follow-up and a report provided. This could be formalised by requiring auditees to provide audit reports within a specified timeframe.

Auditing is an important means to improve developers' understanding of their obligations, and to create an awareness of impacts of development decision and management approaches.

b) Conservation Agreements

EPBC Act agreements are not registered on title and so there are issues in relation to transparency (i.e. "buyer beware") and knowing if an agreement is in place, being breached etc. In the past, there has been investigation of laminating EPBC Act agreements with state agreements such as SA Heritage Agreements over native vegetation. While this arrangement has the potential to provide transparency, in effect, this could shift all responsibility for funding and compliance to the state. In addition, there is potential for some Commonwealth agreements to be prepared that conflict with state government advice, and which are likely to lead to future problems. A joint approach is required in setting conditions with 'manner specified' projects. Ideally conditions attached to 'manner specified' should be converted into a Covenant (encumbrance) that sits on title and is transferable to new owners.

Q36 Are the offence and civil penalty provisions appropriately framed to encourage compliance with the Act?

No comment

Q37 Does the Act contain a sufficiently comprehensive and appropriate range of enforcement mechanisms? Are those mechanisms capable of deterring and responding to contraventions of the Act?

⁴ Finality principle allows court decisions to be subject to appeal to a high court; but otherwise, 'except in a few narrowly defined circumstances', it prohibits the re-opening of court decisions and the re-litigation of disputes and claims.

No comment

Decision-Making under the Act

General comments

Other national reviews and reforms

It is notable that a number of reviews and reforms are underway related to the operation of the EPBC Act. It is therefore important and timely to ensure cross-linkages are made to minimise efforts of those participating in the reviews and to recognise the potential for, and ways to deal with any, conflicting areas, such as the terms of reference, timing and recommendations.

New technology

There is a need for a mechanism to allow for timely amendment of the assessment guidelines in the case of new information becoming available or the state of the environment changing.

Outcomes-focussed

Decisions should focus on outcomes/objectives rather than being prescriptive in the manner in which a project is to be delivered. Such an approach would enable new and emerging technologies to be applied to a project.

- Q38 As the primary decision maker under the Act, is the level of discretion provided to the Minister for the Environment, Heritage and Arts appropriate?

Refer to Q 43.

- Q39 Are the roles of the various Committees established under the Act appropriate for meeting the objects of the Act?

There is a lack of transparency of roles and responsibilities within various committees. There is currently uncertainty among proponents regarding from whom advice should be sought. Providing a fact sheet or similar about the various committees established with contact details could assist this.

- Q40 Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decision under the Act? If not, how should the Act deal with uncertainty?

As previously discussed, more guidance will be required for current and emerging issues such as climate change and sea level rise. Any decision to include climate change and sea level rise impacts as a trigger under the Act would require extensive consultation across all relevant sectors, particularly the development industry.

Q41 Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate?

Given the dual need for timely decisions and due diligence in assessment and consultation processes, it is a continual challenge to come up with improvements. Some of those referred to throughout the review and this submission include:

- A high standard of referrals (containing comprehensive information to allow full assessment)
- Early and/or appropriate engagement by parties
- Use of electronic means to allow timely notice

There appears to be a need for greater transparency of parts of the process, including details regarding conditions, e.g. clear roles and timeframes for compliance. Refer also to the response to Q35.

Q42 Should there be more scope for merits review under the Act? Would the disadvantages of this process – in terms of costs and delays - be outweighed by the advantages?

No comment

Q43 Should a separate body be established to make certain decisions under the Act? If so, what kind of body should be established and what decisions should be entrusted to it?

Given a focus of the review has been related to ESD decision-making (e.g. Q1b), should the review recommend a separate body be formed to assist in this process, then consideration should be given to include representatives of 'social' and 'economic' interests. For example, a more collaborative approach could be achieved by including representatives of the development industry and economic development.

The model used in the South Australian development approvals system provides for the inclusion of wider interests in local assessment panels and the (state-wide) Development Assessment Commission.

More details on the Development Assessment process (including DAP), the Development Assessment Commission and Development Assessment Commission can be found at:

<http://www.planning.sa.gov.au/go/development-applications/assessment-processes-explained>

<http://www.planning.sa.gov.au/index.cfm?objectId=E9F1EB7C-96B8-CC2B-6F950E32775384C8>

<http://www.dac.sa.gov.au/>

The Productivity Commission, in its recent draft report relating to the regulation of the Oil and Gas sector, has explored different models and bodies to assist environmental impact assessment. More information can be found at:

<http://www.pc.gov.au/>

Q44 What is an appropriate framework for assessing the performance of the Act? Do you have particular issues that should be considered during the review?

While the South Australian Government supports the current arrangements for undertaking this S 522A review, in particular, its independence from Government and intent to actively involve States/Territories, the timeframes afforded to this review were unachievable and required State/Territories to seek extensions.

Other more regular and flexible ways to receive and deal with feedback in a timely way need to be developed to accommodate the varying levels of issues and required responses. For example in many instances simple improvements to administrative arrangements would improve the operation of the Act (e.g. explaining advertisement requirements for public consultation; accepting signatures on applications from staff acting in a position).

REFERENCES

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Phillips, W. and Muller, K. (2006). Ecological Character of the Coorong, Lakes Alexandrina and Albert Wetland of International Importance. South Australian Department for Environment and Heritage. Available at http://www.environment.sa.gov.au/biodiversity/pdfs/coorong_exec_summary

ATTACHMENTS

- A: South Australian Government submission (November 2008) to the Senate Standing Committee on Environment, Communications and the Arts Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*
- B: SA's policy and legislative framework

SOUTH AUSTRALIAN GOVERNMENT SUBMISSION

**in response to the Senate Standing Committee
on Environment, Communications and the Arts**

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

October 2008

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Attachments

Attachment A:	No Species Loss Strategy
Attachment B:	Model for integrating conservation and land use planning
Attachment C:	Land Use and Natural Resources Management Planning in South Australia
Attachment D:	Assessment of Mining and Petroleum Proposals

1. Executive summary

The South Australian Government acknowledges that the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has made an important contribution to environmental protection in Australia during its first eight years of operation. It also acknowledges that the recent changes to the EPBC Act, effected in early 2007, aim to further improve the effectiveness of the Act by continuing to strengthen environment and heritage protection while streamlining some of the provisions of the Act and providing greater capacity and flexibility for more strategic approaches to be employed. Many of these reforms are being progressed with the States and Territories and more recently through the Council of Australian Governments (COAG) reform agenda.

The South Australian Government shares the Committee's concern about the continuing decline of a significant proportion of Australia's unique plants and animals, and the likelihood that accelerating climate change will exacerbate challenges faced by Australian species.

The South Australian Government's policy response to this continuing decline and to the challenge of climate change are clearly outlined in: (i) *South Australia's Strategic Plan 2007*; (ii) *No Species Loss – A Nature Conservation Strategy for South Australia 2007-2017*; (iii) the *State Natural Resources Management Plan 2006* and (iv) *Tackling Climate Change: South Australia's Greenhouse Strategy 2007–2020*.

However the continuing decline of biodiversity – particularly in the face of accelerating climate change – compels urgent and collaborative action to build the resilience of ecosystems so that they have the capacity to adapt to changes and disturbances.

While the South Australian Government is working closely with all levels of government, industry, indigenous, rural and urban communities, it is incumbent on all parties to stay focussed on tackling the major threats and to accelerate efforts to build the resilience of our precious ecosystems.

In the South Australian Government's view (and based on key recommendations highlighted in the *National Strategy for the Conservation of Australia's Biological Diversity* and the *Nature Conservation Strategy for South Australia*) key measures to improve the effectiveness of the EPBC Act require the urgent adoption of more holistic, systems-based approaches to biodiversity conservation that take into account management and monitoring at a range of scales, but that are reported within a landscape planning and management context.

The South Australian Government submission highlights a number of key strategies that, if implemented as a matter of urgency, should:

- achieve substantially better environmental outcomes;
- reduce duplication that is involved in project by project approvals and different State/Australian Government approvals and assessments processes;
- More effectively address cumulative impacts rather than assessing individual developments in isolation; and
- Provide a flexible framework to build resilience to climate change threats.

The timing appears ideal, given:

- a) the 2006 changes to the EPBC Act now provide for more strategic and collaborative approaches to achieve the objects of the Act.

- b) COAG has endorsed the uptake of the use of strategic approaches under the EPBC Act, and
- c) the Australian Government can capitalise on South Australia's current planning reforms and other regional biodiversity planning processes.

In summary, the South Australian Government recommends the following:

1. There is an urgent need for the Australian Government to adopt more holistic, systems-based and landscape-scale approaches to biodiversity conservation by:
 - complementing the current listing and referral processes with a broader range of planning tools and approaches .
 - ensuring national biodiversity objectives and targets are integrated into jurisdictional land-use planning. Immediate work could begin to capitalise on South Australia's current round of regional planning work and other planning reforms.
 - accelerating work with States/Territories on projects that will progress strategic approaches under the EPBC Act.
2. The Australian Government must also ensure that adequate and ongoing resources are provided:
 - for long-term natural resources and ecosystem data collection programs, adequate monitoring and evaluation mechanisms and the provision of supportive tools.
 - to bolster efforts and resources for training and education programs and for the development of other supporting tools, particularly to accommodate the need to understand and implement recent and emerging reform programs for Australian Government and State and Territory EPBC-related processes and practices.

Where appropriate, the Australian Government should work closely with States and Territories to develop and deliver these supporting systems, tools and programs.

2. Introduction

The South Australian Government shares the Senate Committee's concern about the continuing decline and extinction of a significant proportion of Australia's unique plants and animals, and the likelihood that accelerating climate change will exacerbate challenges faced by Australian species.

It is incumbent on all levels of government, industry and the community to stay focussed on tackling the major threats and on efforts to build the resilience of our unique ecosystems.

2.1. South Australian policy context

The South Australian Government's key policy responses to the continuing decline and to the challenge of climate change are outlined in: (i) South Australia's Strategic Plan targets¹; (ii) *No Species Loss – A Nature Conservation Strategy for South Australia 2007-2017*; (iii) the *State Natural Resources Management Plan 2006*; and (iv) *Tackling Climate Change: South Australia's Greenhouse Strategy 2007–2020*.

Tackling Climate Change: South Australia's Greenhouse Strategy 2007–2020 is South Australia's long-term response to climate change. It provides a series of innovative and comprehensive strategies for the State to effectively address climate change. South Australia's strategies for increasing the capacity of ecosystems to adapt to climate change include: determining priorities for biodiversity conservation, identifying opportunities to build resilience in ecosystems, and improving ecological function and connectivity.

On 10 July 2007, the South Australian Government released *No Species Loss – A Nature Conservation Strategy for South Australia 2007-2017* (see Attachment A). The Strategy provides a framework to address terrestrial, aquatic and marine biodiversity decline in South Australia, by bringing together existing policy, legislative and strategic instruments for natural resources management and biodiversity conservation. It aims to inform the State's planning and development assessment system and provides guidance for incorporating biodiversity conservation into the State and regional Natural Resources Management (NRM) plans.

In recognition of the significant challenge that climate change brings to biodiversity conservation, the goals and objectives of *No Species Loss* are closely aligned with the biodiversity conservation objectives of *Tackling Climate Change: South Australia's Greenhouse Strategy 2007–2020*. *No Species Loss* also recognizes that response measures require a combination of approaches and the application of a 'landscape approach' to biodiversity conservation.

The strong linkages between biodiversity conservation and natural resources management offer many opportunities to develop complementary outcomes whilst avoiding unnecessary duplication of effort, policies and structures. To this end, the *State Natural Resources Management Plan 2006* promotes the development of better integrated legislation and policy structures to support land and seascape-scale management. These outcomes are articulated in the following goals of the plan:

Goal 1: Landscape scale management that maintains healthy natural systems and is adaptive to climate change

¹ TARGET 3.1– Lose no species: lose no known native species as a result of human impacts.

TARGET 3.2 – Land Biodiversity: by 2010 have five well-established biodiversity corridors aimed at maximising ecological outcomes particularly in the face of climate change.

Goal 2: Prosperous communities and industries using and managing natural resources within ecologically sustainable limits

Goal 3: Communities, governments and industries with the capability, commitment and connections to manage natural resources in an integrated way.

Improved integration could also assist in delivering the following State NRM Plan targets:

- by 2020, 50 per cent of species and communities in each of the 2006 risk categories have moved to a lower risk category;
- by 2011, no species and ecological communities have moved to a higher risk category;
- by 2011, no further net loss of natural habitat (terrestrial, marine and aquatic) extent and condition below that of 2006; and
- by 2020, a net increase in ecological connectivity across all terrestrial, marine, and aquatic ecosystems compared to the 2006 values.

Water, vegetation and soil targets in the State NRM Plan are also highly relevant to achieving biodiversity outcomes.

The *Planning Strategy for South Australia* (as outlined in Attachment C) provides policy direction for land use and development in South Australia over the medium term.

The South Australian Government has recently announced reforms, titled *Better Planning Better Future: Planning Reforms 2008* to improve and streamline South Australia's planning and development approvals processes. The adoption of more strategic approaches into planning and development policy is a key element of these reforms and provides consistency with the reforms being driven through the Council of Australian Government's (COAG) Business Regulation and Competition reform agenda to improve EPBC Act processes.

2.2. Commonwealth / national policy context

The *National Strategy for the Conservation of Australia's Biological Diversity* (DEST 1996) attributes the loss of biological diversity to a complex set of underlying causes including:

- the size and distribution of the human population;
- the level of resource consumption;
- market factors and policies that provide incentives for biological diversity depletion;
- undervaluation of environmental resources;
- inappropriate institutions and laws;
- ignorance about the importance and role of biological diversity;
- underinvestment in biological diversity conservation; and
- inadequate knowledge of our biological diversity and the rate at which it is being lost.

The National Strategy advocates that high priority must be placed on **developing and implementing integrated approaches to conservation** that both conserve biological diversity and meet other community objectives.

Objective 1.2 of the National Strategy is to: ***“Manage biological diversity on a regional basis, using natural boundaries to facilitate the integration of conservation and production-oriented management”***. Furthermore the National Strategy emphasises the major importance of that **bioregional planning** to the success of biological diversity conservation.

The need to adopt bioregional planning approaches has also more recently been highlighted in a) the current review of the National Biodiversity Strategy and b) a national workshop on the impacts of climate change on the development and management of the National Reserve System (reported in Dunlop and Brown 2008). The workshop concluded that bioregional biodiversity strategies should be developed that take into account: linking the National Reserve System with private lands managed for conservation objectives; natural resources management; threat assessment; fire management; pest control; and ex situ conservation.

In February 2007, legislative changes enhanced the strategic provisions of the EPBC Act. The Act now allows for a range of approaches to more efficiently achieve the Act's objectives. For example, provisions relating to Strategic Assessments (s146) and Bioregional Plans (s176) can now encourage or facilitate joint (State-Commonwealth) planning processes that employ 'landscape-scale' management processes. The EPBC Act also enables strategic assessment of broader policies and plans. If a plan is endorsed under the EPBC Act following such an assessment, then actions taken in accordance with the plan do not require separate or individual approval. The likely advantages to all communities from this approach includes biodiversity conservation, business certainty and streamlined approvals processes.

The Council of Australian Governments (COAG) Business Regulation and Competition reform agenda relating to improved EPBC Act processes has recently been expanded (refer March and July 2008 Communiques and Implementation Plans) to promote the uptake by States/Territories and the Australian Government of more strategic approaches under the EPBC Act.

Based on South Australia's and the national policy agenda, it is timely and appropriate for more holistic and strategic approaches to be adopted to improve the effectiveness of the EPBC Act.

Section 4, which responds to terms of reference 2b, details many of the ways in which South Australia believes these approaches and concepts could be progressed, while sections 3 and 5-7 provide a short response to the terms of reference 2a, c, d, f and g.

3. Terms of reference (2a) Audit Report

The findings of the National Audit Office Audit 38 Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999

It is noted that the 2003 report of the National Audit Office Audit 38 *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999* is now outdated as many of its recommendations have already been adopted by the Australian Government with some changes being made to the EPBC Act during the 2007 amendments.

Improvement is required in the following areas:

Awareness of the Act

The 2003 audit report noted that the Australian Government has made serious efforts to promote awareness of the EPBC Act.

In South Australia there have been relatively few referrals submitted in the past eight years (164 referrals until 1 September 2008) which may reflect a lack of awareness in the general community on the EPBC Act.

The Australian Government has previously funded a number of EPBC Act information sessions which targeted local councils, NRM boards and State agencies in South Australia. These information sessions were well received and were useful in raising the profile of the EPBC Act amongst agencies. Additional information sessions would be useful for new staff in these agencies.

There is a lack of understanding in the community surrounding the terms 'significant impact' and 'indirect and off site impacts'. This can be alleviated by the delivery of specific awareness programs.

Given the recent reform programs for Australian Government and State and Territory EPBC related processes and practices, there is a growing need to bolster efforts and resources for training and education programs and for the development of other supporting tools. Where appropriate, the Australian Government should be working closely with States and Territories to develop and deliver these new requirements.

Compliance and enforcement

The 2003 audit report concluded that monitoring and enforcing compliance with the requirements of the Act is crucial to its effective operation.

The onus is on the proponent for implementing actions that mitigate potentially significant impacts, or conditions of approval. However there maybe a case for further investment by the Australian Government to ensure that the mitigating actions have been carried out appropriately by the proponent. Without adequate compliance, there is insufficient incentive for proponents to continue to implement mitigating actions required of them by the Australian Government.

4. Terms of reference (2b) Protection of critical habitats of threatened species and ecological communities

Lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery;

4.1. Lessons Learnt

The current biodiversity conservation measures in the EPBC Act have a strong focus on identifying and managing threatened species, threatened ecological communities and key threatening processes. While these are often effective for focussing attention on the protection of habitat critical to the survival of threatened species², they do not adequately address the key matters of National Environmental Significance and of biodiversity conservation on a landscape-scale.

Other operational issues that hinder the efficacy of the Act include:-

- delays, and in some cases removal of nominations, for the listing of many threatened ecological communities and threatened species;
- backlogs of threatened species and threatened ecological communities nominations;
- the long time frames required to both prepare and receive Australian Government Ministerial ratification of recovery plans; many threatened species still lack recovery plans³; and
- the inadequacy of monitoring programs to effectively measure the effectiveness of recovery plans in conserving species against short, medium and long-term goals.

Traditionally, threatened species recovery planning and management has been focused on the recovery of single species, although the approach to achieving that recovery has been (and still is) based around the protection of habitat critical to survival and the management of significant threats. This approach has seen a number of successful programs implemented for threatened species in Australia and elsewhere² which frequently demonstrate a wide range of outcomes beyond just the target species, and often address the conservation requirements of species at a very broad landscape-scale (e.g. fire management for the black-eared miner (*Manorina melanotis*) in Bookmark Biosphere Reserve mallee; introduced predator and herbivore management at the Arid Recovery project).

However, it is recognised that there is a limit to the rate at which recovery plans can be developed and, more particularly, implemented, highlighting the fact that other complementary conservation planning approaches are also required to manage and conserve biodiversity most effectively across the landscape.

4.2. Measures to improve recovery

As stated in Section 2, the *National Strategy for the Conservation of Australia's Biological Diversity* (1996) and South Australia's *No Species Loss Strategy* both recognise the complexity of the challenge to conserve and protect Australia's biodiversity. In order to more effectively deal with this complexity and to meet the

² Taylor et al (2005) concluded that single species recovery plans have been shown to be statistically strongly associated with recovering populations trends for US endangered species.

³ Auditor-General's report (ANAO 2007) showed that approx 22% of all threatened species and 68% of ecological communities under the EPBC Act had a recovery plan in place by 2004

biodiversity objects outlined in the EPBC Act, there is an urgent need for the Australian Government to adopt more holistic, systems-based and landscape-scale approaches to biodiversity conservation by:

- complementing the current listing and referral processes, through broadening the use of tools and the number of approaches used.
- ensuring national biodiversity objectives and targets are integrated into jurisdictional land-use planning.
- (and more generally) accelerating work with States/Territories on projects that will progress strategic approaches under the EPBC Act.

a) Complementary approaches, including bioregional planning

Complementary approaches should include planning for conservation at a landscape scale so that recovery planning and management actions are integrated with land-use planning and regional development strategies. Recovery planning can also inform National Reserve System (NRS) and Comprehensive, Adequate and Representative Reserve System (CARRS) planning by identifying gaps in comprehensiveness, adequacy and representativeness.

The preparation and adoption of bioregional plans using bioregional planning tools in a cooperative manner between the Australian and State / Territory Governments would also enable consistent strategic decision-making at scales larger than at present. More comprehensive plans, such as at the Interim Biogeographic Regionalisation for Australia (IBRA) Sub-regional scale, allow a wider biodiversity context for decision-making on controlled actions and avoid ignorance of the cumulative impacts in planning and development. The bioregional planning program, and incorporation of some of the tools that deliver the landscape-scale context between current species recovery planning and continental (NRS and CARRS) planning strengths should be accelerated.

b) Integrating biodiversity objectives into land-use planning

In South Australia the integration of nature conservation and other natural resource objectives and targets takes place within Regional NRM Plans. These plans are currently being developed by the eight Regional NRM Boards in South Australia, with the exception of the Adelaide and Mt Lofty Ranges NRM Board (AMLR NRMB), which released its plan in July 2008.

The Draft Biodiversity Strategy for Adelaide and the Mount Lofty Ranges (in preparation) directly informs the regional NRM planning process. A number of State Government agencies were involved in the development of the Regional NRM Plan to ensure that biodiversity considerations were effectively integrated with other natural resource commitments (including agricultural production and water resources management targets). This provides a model for the other regions of South Australia to follow as they prepare their Regional NRM Plans.

Where possible bioregional boundaries and NRM, State and other socio-political boundaries should be aligned in a manner that supports efficient bioregional planning. This minimises difficulties in managing conservation issues across the landscape due to disparities in planning and funding and reporting processes.

Biodiversity conservation targets must also be integrated into the land-use planning process. In South Australia, there is an ideal opportunity to integrate nature conservation and development objectives in land-use planning and regional development strategies through the current development of *Regional Land Use Frameworks* (RLUF) and the *Plan for Greater Adelaide*. Attachment B provides more

detail on the Land Use and Natural Resources Management Planning in South Australia.

Attachment C outlines the current and proposed models for the interaction of biodiversity conservation planning with Regional NRM Plans and State Planning Systems in the current South Australian legislative and policy framework.

c) Accelerate Use of Strategic Approaches under the EPBC Act

The recent changes to the EPBC Act also offer a timely and important opportunity to adopt more strategic, integrated and 'landscape scale' approaches that are consistent with the COAG reform agenda.

The South Australian Government has been working with the Australian Government to identify more strategic approaches and to reduce the need for project by project approvals. Indications are that strategic approaches under the EPBC Act will offer more flexible environmental assessment and approval processes and add value to the sustainable economic development of Australia. While the potential of strategic approaches is not fully known, a number are emerging that could suit South Australia's policy direction and process improvements, such as the Planning reforms.

Some of the key areas identified in the preliminary discussions on strategic projects for South Australia include:

- Joint bioregional planning processes to accelerate and enhance current NRM and land-use planning processes. Initial attention could focus on areas flagged for future housing or other development that would benefit from a holistic and landscape-based assessment to achieve the best social, environmental and economic outcomes.
- Strategic assessment (viz accreditation) of South Australia's Planning Strategy – Regional Land Use Framework process;
- Investigating options relating to mining and petroleum industries, eg further accreditation of / bilateral agreements relating to assessment processes in South Australia (refer Attachment D). An important consideration here is the development of processes that take into account the net total loss of habitat that results from incursions such as clearance for roads, tracks and service infrastructure. Other opportunities include the development of EPBC policies to guide industry practices; and
- Progressing a strategic assessment of South Australian fire management planning.

The Australian Government and States and Territories need to work quickly and collaboratively to capitalise on current reform and planning processes to effect biodiversity improvements in the most vulnerable areas.

4.3. Summary of measures to improve the effectiveness of the EPBC Act

There is an urgent need for the Australian Government to adopt more holistic, systems-based and landscape-scale approaches to biodiversity conservation by:

- complementing the current listing and referral processes, by broadening the number of approaches and use of tools.
- ensuring national biodiversity objectives and targets are integrated into jurisdictional land-use planning. Immediate work could begin to capitalise on South Australia's current round of regional planning work and other planning reforms.

- accelerating work with States/Territories on projects that will progress strategic approaches under the EPBC Act. This

The Australian Government must also ensure that adequate investment is provided for long-term natural resources and ecosystem data collection programs, adequate monitoring and evaluation mechanisms and the provision of supportive tools.

5. Terms of Reference (2c) Cumulative Impacts

the cumulative impacts of EPBC Act approvals on threatened species and ecological communities, for example on Cumberland Plain Woodland, Cassowary habitat, Grassy White Box Woodlands and the Paradise Dam

It should be noted that many actions in isolation can be insignificant, but the cumulative effect across a landscape can be detrimental.

As referred to in Section 4 (ToR 2b) of this submission, the EPBC Act provides for a range of tools for proactively dealing with cumulative impacts, however these tools are currently underutilised.

There is a need to accelerate the use of these tools for proactively integrating environment assessment and management and to better deal with consideration of cumulative impacts

6. Terms of Reference (2d) Climate change

The effectiveness of responses to key threats identified within the EPBC Act, including land-clearing, climate change and invasive species, and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate

A critical component of planning processes for matters of National Environmental Significance (NES) should be the inclusion of conservation targets and objectives that will provide an enhanced capacity to build ecosystem resilience to the impacts of climate change.

Landscape conservation planning, undertaken within a bioregional context, and integrated with NRM Regional Plans, should incorporate an assessment of the current health of a landscape and its trajectory (i.e. is it restorable, or can we only maintain what is left). Knowledge of the health/status of a landscape, and what factors are driving this clarifies the immediate needs for management and restoration. Importantly, this information also provides the basis for undertaking a risk assessment in terms of future scenarios and likely responses. Future environmental change, such as climate change, would provide the context for such a risk analysis approach.

The *No Species Loss* strategy seeks to identify and fill key gaps in knowledge to influence biodiversity management and provide an enhanced capacity to adjust to climate change impacts.

The lack of sound modelling and mapping of the impacts of climate change on natural systems represent current gaps in our knowledge that leave Australia vulnerable in terms of developing effective biodiversity adaptation strategies. Significant investment is required to progress the development of biodiversity conservation baselines and targets that will enable the long-term impacts of climate change on biodiversity to be monitored and managed appropriately.

7. Terms of reference (2g) Funding

The impact of programme changes and cuts in funding on the decline or extinction of flora and fauna.

The lack of long term funding is one of the biggest impediments to implementing effective recovery programs for threatened species/ecological communities.

Without long term funding commitments:

- it is difficult to establish an appropriate maintenance regime,
- adequate monitoring programs cannot be implemented;
- there is reduced ability to retain threatened species staff and regional knowledge (including knowledge of species, their habitats, site management, and previous landholder contact);
- long-term and innovative threat abatement programs cannot be implemented;
- certainty for implementing and maintaining effective recovery plans is significantly reduced.

Good environmental outcomes occur when people are communicating to find a solution that meets both the needs of the community and the needs of the environment. The EPBC Act and other environmental programs can facilitate this more effectively at a local level.

The Australian Government Liaison Officers regularly travel to the regions and remain an excellent source of information about the EPBC Act and an avenue to relay regional concerns. These staff have an excellent network developed throughout the state and also provide a valuable role in increasing awareness and understanding of the EPBC Act and other Australian Government programs. Unfortunately the number of these positions has been reduced and this has impacted on the ability of the remaining Liaison Officers to carry out their role effectively.

These changes reflect two key issues about matters of National Environmental Significance conservation planning and management, viz:

1. lack of regional NRM understanding and appreciating their roles and responsibilities in addressing matters of National Environmental Significance as **their** priorities; and
2. lack of an effective reporting tool/mechanism that enables progress in meeting action targets to be provided, interpreted and understood; and lack of ability to report in a step-wise fashion on long-term progress against long-term targets (there still seems to be a focus on short term outputs, rather than longer term outcomes)

8. Further Information

Any questions or queries in regard to this submission can be directed to:

Mr Brenton Gear, Director, Nature Conservation, Conservation Policy and Programs,
Department for Environment and Heritage, GPO Box 1047, Adelaide SA 5001
telephone: 8222 9450

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Attachment A: No Species Loss Strategy

The South Australia Government has committed to South Australia's Strategic Plan (SASP) Target 3.1: Lose No Species - *lose no known native species as a result of human impacts*. The target's measure is no decline and, where possible, an improvement in the regional status of known native species or relevant ecological communities.

On 10 July 2007, the South Australian Government released "*No Species Loss – A Nature Conservation Strategy for South Australia 2007-2017*" (No Species Loss Strategy).

Available at http://www.environment.sa.gov.au/biodiversity/pdfs/nsl_strategy.pdf

The *No Species Loss Strategy* outlines the direction and effort required in South Australia over the next decade to try to halt terrestrial, aquatic and marine biodiversity decline. Effective conservation of biodiversity requires the review and setting of conservation targets at regular intervals. The *No Species Loss Strategy* also provides us with the framework to ensure the planning and actions we undertake in the next decade are the right ones to manage the complex and long term challenges we face to halt biodiversity decline.

South Australia's plants and animals and the ecosystems they form have been in decline. At least 26 plants, 27 mammals, 8 birds and 1 reptile species are presumed to have become extinct in South Australia since European settlement. No species are known to have become extinct from South Australia in the past decade or more.

No Species Loss has been integrated into the SA Department for Environment and Heritage's (DEH) Nature Conservation Program.

A *No Species Loss Implementation Plan* is being developed during 2008-09 to facilitate, guide and monitor progress from relevant agencies responsible for delivering targets from *No Species Loss*.

Regional status assessments for flora and fauna, as identified in Targets 6 and 7 of *No Species Loss*, have commenced in the Northern & Yorke and the Adelaide-Mt Lofty Ranges regions. The DEH has prepared a draft *South Australian Arid Lands Biodiversity Strategy 2008-2018*.

Threatened species recovery plans (including the Glossy Black Cockatoo, Malleefowl and a range of Mt Lofty orchids) continue to be implemented. Out of 485 endangered and vulnerable listed threatened species in South Australia, there are recovery plans and related action plans being implemented for 202 (or 43%) of them. More importantly in terms of the recommendations of this submission, a regional recovery pilot in Adelaide Mount Lofty Region is currently underway.

Funding of approximately \$1.5 million has been committed by the South Australian government in 2008-09 towards ensuring ongoing scientific research of ecological processes, development of detailed biodiversity planning strategies and implementation of species and community recovery plans.

Attachment B: Model for integrating conservation and land use planning

Work in Progress – South Australian Model

South Australian agencies are working towards establishing better operational links between Regional bioregional plans and NRM Plans and Regional Land Use Frameworks (RLUF).

The Biodiversity Strategy for Adelaide and the Mount Lofty Ranges (in preparation) provides direct links to the Adelaide and Mount Lofty Ranges regional NRM Plan (AMLR Plan), and provides conservation targets that can be incorporated within other planning documents. Biodiversity targets informed by the biodiversity strategy have been incorporated into the AMLR plan.

A current landscape restoration project is working towards developing and applying a process to determine landscape restoration needs and actions to ensure the maintenance of biodiversity. Although not quite completed, one outcome of this project has been the development of a broader landscape conservation planning framework that would integrate the various planning approaches that are in place. The basis for this project was the recognition that we had continental pattern based planning (i.e. CARRS) and local component based planning (i.e. species recovery), but what was missing was the landscape perspective. The integration of the various planning issues at all three scales should ultimately underpin a regional biodiversity planning.

Proposed South Australian Model

Ideally integration can be achieved through Regional NRM Plans and RLUF. Currently regional NRM plans or RLUF are working towards a more holistic approach.

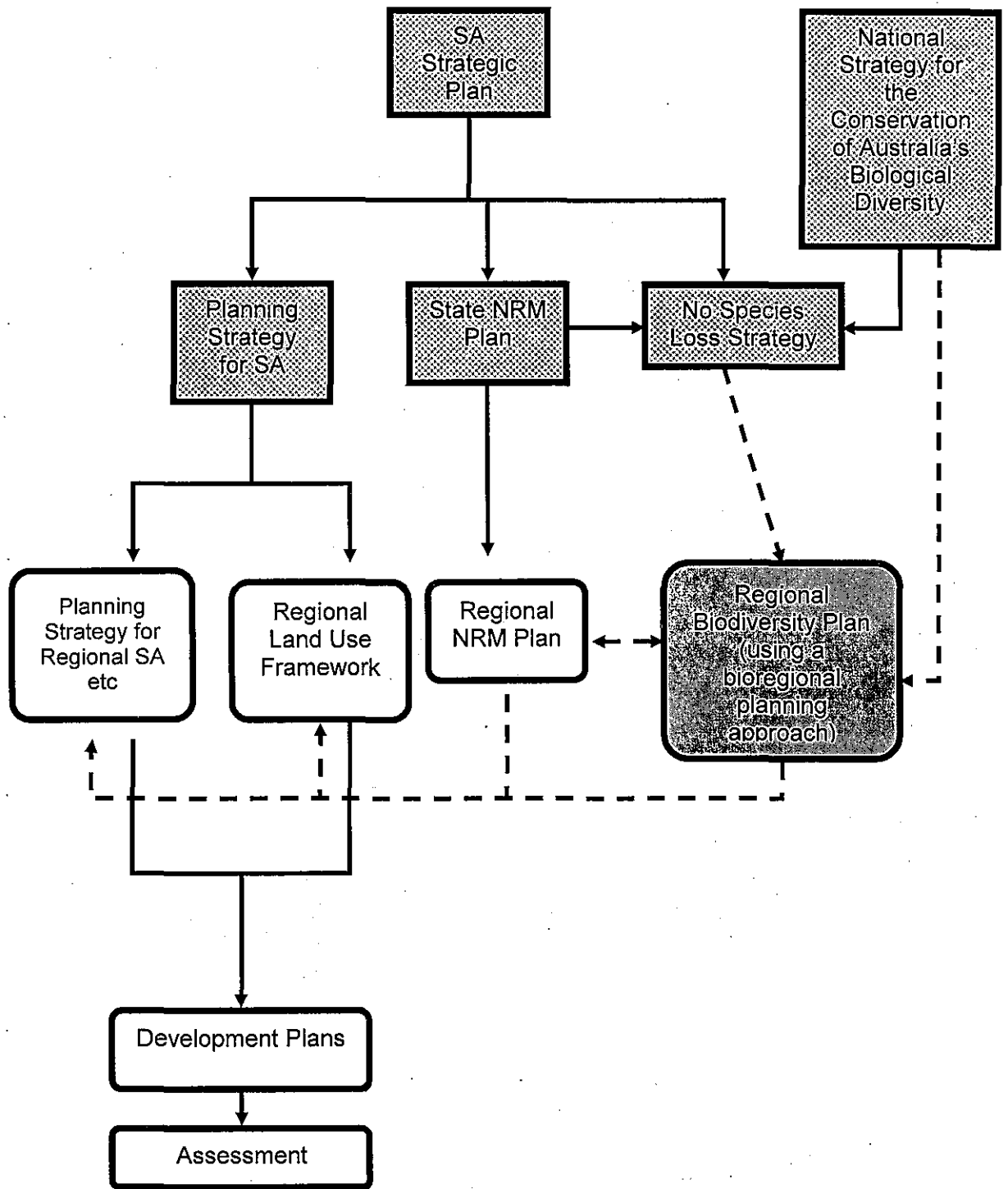
Figure 1 depicts the interrelationships between strategies, plans and processes relating to South Australia. This model, if based on the use of a comprehensive bioregional planning approach, could enhance ways to integrate national and state nature conservation and development objectives into South Australia's land use planning strategies.

Note: A model process⁴ for bioregional planning for biodiversity conservation could incorporate the following elements:

- identification of the bioregion, based on appropriate natural boundaries such as IBRA;
- identification of threats to biodiversity to be protected within the "community of interest";
- expert advice being sought on best means of combating the threats;
- community agreement on a vision for biodiversity in the region and the best strategies to combat the threats to it;
- incorporation of strategies into ongoing activities and existing planning processes, and
- ongoing monitoring and reporting.

⁴ DEST (1996) Approaches to bioregional planning.

Figure 1: Integration of nature conservation and development objectives in land use planning strategies, using a bioregional planning approach



Attachment C: Land Use and Natural Resources Management Planning in South Australia

South Australian Natural Resources Management Plans

The State NRM plan identifies a 50-year vision for natural resources management in South Australia and sets out policies, milestones and strategies to achieve that vision. The plan fits within an extensive policy framework of international, national, state, regional and local policies, legislation, agreements and strategies. The vision of the State NRM Plan is as follows:

Vision: South Australia, a capable and prosperous community managing natural resources for a good quality of life within the capacity of our environment for the long term.

The plan is based on a set of guiding principles that aim to clarify the thinking and intent behind successful and sustainable natural resources management. It charts key directions for natural resources management under the following four main goals:

Goal 1: Landscape scale management that maintains healthy natural systems and is adaptive to climate change.

Goal 2: Prosperous communities and industries using and managing natural resources within ecologically sustainable limits.

Goal 3: Communities, government and industries with the capability, commitment and connections to manage natural resources in an integrated way.

Goal 4: Integrated management of biological threats to minimise risk to natural systems, communities and industry.

Regional Natural Resources Management (NRM) Plans are developed pursuant to the *Natural Resources Management Act 2004 (SA)* and are based on a whole-of-region approach: they address significant NRM issues incorporating social, environmental and economic aspects. A regional NRM Plan includes a ten year strategic plan for the region; and contains information on the condition of natural resources and issues related to their use, management and conservation at regional and local level.

More information is available on <http://www.nrm.sa.gov.au/>

South Australian Planning Strategy

The Planning Strategy provides direction from the State Government on land use and development in South Australia over the medium term (a period of 10-15 years).

The Planning Strategy currently comprises five volumes:

- The Planning Strategy for Metropolitan Adelaide
- The Planning Strategy for the Outer Metropolitan Adelaide Region
- The Planning Strategy for Regional SA
- The Yorke Peninsula Regional Land Use Framework
- The Greater Mount Gambier Master Plan

The Planning Strategy supports the development of regional areas of the State through sound and responsive planning that encourages and facilitates development based upon land use that balances development and conservation.

The Planning Strategy guides land uses through local councils in development plans pursuant to the *Development Act 1993 (SA)*. The Strategy provides regional guidance on using land in a way that balances economic, social and environmental factors and integrate resources and catchment management with land use planning.

Regional Land Use Frameworks aim to develop a coordinated and integrated vision for land use and development across an entire region, and identify the planning priorities necessary to achieve the vision.

South Australian Planning Reforms

The key areas of planning reforms announced in the *Better Planning Better Future: Planning Reforms 2008* are:

- strategy as a growth driver,
- streamlined development assessment,
- an overhaul of land supply management, to provide certainty of land supply for residential and commercial – industrial land,
- better institutional arrangements.

Under the reforms, the Government will set aside high-value agricultural and conservation lands to ensure they are protected properly and ensure the broader liveability and lifestyle demands of citizens are met.

More information is available on:

<http://www.planning.sa.gov.au/go/planningreform2008>

Attachment D: Assessment of Mining and Petroleum Proposals

The South Australian Government conducts a rigorous assessment of the social, environmental, cultural and economic impacts of all mining, petroleum and geothermal proposals in South Australia. Proponents are required to satisfy the relevant South Australian authorities that all State legislative requirements will be met and that they are able to address and minimise any environmental risks that are associated with the proposal.

Assessment of Mining Proposals

South Australia recognises that the Australian Government has responsibilities when proposals may involve matters of national environmental significance. South Australian Government agencies with responsibilities for mining matters have worked collaboratively and cooperatively with Australian Government agencies, in order to provide clarity in assessment and regulation of mining proposals.

In order to provide this clarity, both jurisdictions have jointly developed guidelines on a case-by-case basis for developing assessment documents for the purposes of both jurisdictions. This has allowed proponents to develop a single set of assessment documents that satisfy the requirements of both jurisdictions.

Although each jurisdiction then conducts an assessment of the documentation, efforts have been made to ensure that assessments are conducted in parallel and that each jurisdiction follows the same schedule for assessment. This has been found to be particularly important when consulting with the community on proposals.

Where appropriate, South Australia ensures that all tenements are subject to conditions that reflect the requirements of Australian Government legislation and that regulatory documents and processes address Australian Government requirements. South Australia recognises that the Australian Government has both the right and the duty to assess and regulate certain activities and does not seek to act as an agent of the Australian Government by taking these actions. Rather, South Australia wishes to ensure that its regulatory regime is consistent with Australian Government requirements and hence eliminate the duplication of regulatory and compliance effort.

To date, assessment of mineral related processes has been conducted on a case by case basis as there have been few such assessments required.

As the level of mining activity in South Australia, especially uranium mining, is expected to increase, discussions will continue on streamlining assessment processes.

Assessments of Petroleum Proposals

In offshore petroleum exploration, the South Australian Minister for Mineral Resources Development is the Designated Authority for the *Offshore Petroleum Act 2006* (previously the *Petroleum (Submerged Lands) Act 1967*). There are stringent requirements under this act for environmental management. Referrals to the EPBC Act are regularly done by exploration proponents. Substantive work has been done over many years to finalise a strategic assessment for exploratory activities relative to the EPBC Act. In addition, there has been extensive work done to prepare a revised set of guidelines for managing the interaction between seismic exploration and whales (EPBC Act Policy Statement 2.1). Both these instruments have been the subject of a large amount of scientific input and community and industry engagement. Even so, there appears to be a reluctance to put faith in these documents as a basis of approval, with many proposals, particularly recently, being subject to additional requirements in referral decisions under the EPBC Act. There appears to be no additional scientific rationale for these additional requirements compared to the

scientific knowledge that went into Policy Statement 2.1 or the strategic review. Such an approach precipitates a substantial sovereign risk to explorers, and is a significant impediment in a global market that is already highly competitive.

Furthermore, it was considered more important that the focus of streamlining efforts be the development of a bilateral agreement under Section 45 of the EPBC Act between the Australian Government and the South Australian Government that accredited the assessment processes under South Australia's *Development Act 1993*. This bilateral agreement was signed by the Australian Government in March 2008 and by South Australia in July 2008. A similar bilateral approach should be considered for the *Offshore Petroleum Act 2006*.

SOUTH AUSTRALIAN POLICY CONTEXT AND LEGISLATIVE FRAMEWORK

a) South Australian policy context

The South Australia's key policy responses to environmental protection and biodiversity conservation matters are outlined in:

- (i) South Australia's Strategic Plan targets, in particular:
 - 3.1: Lose no species: lose no known native species as a result of human impacts.
 - 3.2: Land Biodiversity: by 2010 have five well-established biodiversity corridors aimed at maximising ecological outcomes particularly in the face of climate change.
 - 3.4: Marine biodiversity: by 2010 create 19 marine parks aimed at maximising ecological outcomes.
- (ii) *No Species Loss – A Nature Conservation Strategy for South Australia 2007-2017;*
- (iii) *State Natural Resources Management Plan 2006;*
- (iv) *Tackling Climate Change: South Australia's Greenhouse Strategy 2007–2020;*
- (v) *Living Coast Strategy for South Australia 2004 and*
- (vi) *Planning Strategy for South Australia.*

More details can also be found in the attached South Australian Government submission to the Senate Inquiry into the operation of the EPBC Act (Attachment).

b) South Australian legislative framework

South Australia has several pieces of legislation dealing with environment protection and biodiversity conservation. These include:

- The *National Parks and Wildlife Act 1972* which allows for the protection of habitat and wildlife through the establishment of parks and reserves (both on land and in State waters) and provides for the use of wildlife through a system of permits allowing certain actions, ie. keeping, selling, trading, harvesting, farming, hunting and the destruction of native species.
- The *Wilderness Protection Act 1992* which allows for the identification and establishment of wilderness areas.
- The *Natural Resources Management Act 2004* which assists in the achievement of ecologically sustainable development in the State by establishing an integrated scheme to promote of the use and management of natural resources that recognises and protects the intrinsic values of natural resources.
- The *River Murray Act 2003* provides for the protection and enhancement of the River Murray and related areas and ecosystems; and for other purposes.

ATTACHMENT B

(SA Government submission)

- The *Native Vegetation Act 1991* provides for the retention and encourages management of South Australia's remaining native vegetation while providing a regulatory framework to allow clearance of vegetation where it is necessary for the State's economic development subject to clearance of native vegetation being offset by a significant environmental benefit elsewhere.
- The *Environment Protection Act 1993* provides for the protection of the environment.
- The *Development Act 1993* provides for the planning and regulation of development in the State.

Other relevant environmental, heritage and resource management legislation that may have some interface with the EPBC Act include the *Aboriginal Heritage Act 1988*, *Adelaide Dolphin Sanctuary Act 2005*, *Aquaculture Act 2001*, *Coast Protection Act 1972*, *Fisheries Management Act 2007*, *Heritage Places Act 1993*, *Marine Parks Act 2007*, *Mining Act 1971*, *Petroleum Act 2000*, *Radiation Protection and Control Act 1982*.

c) Avoidance of duplication with EPBC Act

In June 2001, the *Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001* was passed to facilitate the dovetailing of South Australian assessments and the Commonwealth assessment of proposals under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* ("the EPBC Act").

It inserted the following provisions into legislation:

- s52A *Development Act 1993*;
- s50A *Environment Protection Act 1993*;
- s79A *Mining Act 1971*;
- s29A *Native Vegetation Act 1991*;
- s130A *Petroleum Act 2000*; and
- s144A *Water Resources Act 1997* (now superseded by the *Natural Resources Management Act 2004*)

These provisions explicitly allow the use of documents prepared for EPBC Act purposes and procedures followed for EPBC Act purposes that meet the substantive (though not necessarily form) requirements of the State legislation to be used in State assessments.

The provisions also provide that a State decision maker must heed any conditions that have been attached to an approval under the EPBC Act, and consider whether conditions to be imposed under the State legislation should be consistent with those conditions. Also, a State decision maker may impose a condition requiring compliance with the EPBC Act conditions (or some of them).

The provisions were designed so as not to interfere with any case-by-case accreditation of the assessment of a proposal or, indeed, assessments that could be undertaken under any bilateral agreement.

ATTACHMENT B

(SA Government submission)

The uptake of these provisions has to date been very limited. Key reasons for the non-use of the provisions designed to allow avoidance of duplication of documents are as follows:

1. **Limited scope of the Commonwealth interest & associated proponent preference.** The Commonwealth is interested in matters of national environmental significance only for assessments. As State assessments typically consider a range of environmental, social and economic issues, it is awkward for documents to simply be adopted.
2. **Timing issue.** The Commonwealth process may precede, or run behind, State assessment processes, making integrated use of documents more difficult.
3. **Limited number of controlled actions in South Australia.** Only a limited number of actions have been declared as controlled actions for the purposes of the EPBC Act. Of those found to be controlled, a number have been subject to different State assessment processes.

d) **Bilateral Agreement relating to Environmental Impact Assessment**

The Bilateral Agreement between the Commonwealth of Australia and the State of South Australia accredits the South Australian Major Development assessment process conducted pursuant to Division 2 of Part 4 of the South Australian *Development Act 1993*.