



Australian Government
Department of Agriculture,
Water and the Environment

Accreditation criteria for 'single touch' approvals under the *Environment Protection and Biodiversity Conservation Act 1999*

2020



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PREFACE

The Australian Government is committed to delivering 'single touch' environmental approvals that will accredit state and territory approval systems under national environmental law. The single touch policy aims to remove duplication by working together with the states and territories to protect our environment, while keeping our economy strong.

These *Accreditation criteria for 'single touch' approvals under the Environment Protection and Biodiversity Conservation Act 1999* (the accreditation criteria) have been developed to inform the accreditation of environmental approval systems and negotiation of approval bilateral agreements between the Commonwealth and each state and territory.

The accreditation criteria are a Commonwealth document and form the basis for the Australian Government's approach to bilateral negotiations. They:

- set out outcomes for matters of national environmental significance (MNES) and environmental approval systems to be achieved through single touch approvals;
- set out requirements for entering into bilateral agreements and accrediting approval systems under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); and
- include considerations, informed by Commonwealth policy and practice, which provide additional guidance to states and territories on factors that the Commonwealth Environment Minister (the Minister) may take into account when determining whether to enter an approval bilateral agreement or accredit an environmental approval system.

The accreditation criteria form part of a rigorous assurance framework that will include a series of checks and balances, to ensure that the bilateral agreements are implemented effectively and are delivering on intended outcomes. In combination with the accreditation criteria, the assurance framework will be designed to keep the states and territories accountable and provide the Government, business and the community with ongoing confidence that bilateral agreements will:

- deliver efficient and effective environmental assessment and approval systems;
- deliver decisions that are not inconsistent with the national environmental standards; and
- not be inconsistent with Australia's obligations under relevant international agreements.

1. INTRODUCTION

This document sets out accreditation criteria for entering into approval bilateral agreements and accrediting state and territory management arrangements or authorisation processes to undertake environmental approvals for the purpose of the EPBC Act.

The implementation of a comprehensive approach for the accreditation of environmental approvals is a collaborative endeavour involving the Commonwealth working together with state and territory governments to protect our environment. These accreditation criteria have been prepared to provide a basis for further discussions with the states and territories of the requirements for a robust and efficient approval system underpinned by national environmental standards that delivers decisions consistent with the requirements of the EPBC Act and which minimises duplication.

Purpose of the accreditation criteria

The accreditation criteria are designed to support the implementation of the Australian Government's 'single touch' environmental approvals reform by facilitating a detailed exchange of information between the Commonwealth, states and territories about:

- the requirements that must be satisfied for the Commonwealth to accredit state and territory systems and enter bilateral agreements under the EPBC Act; and
- how each state and territory system could address those requirements.

This document sets out:

- contextual information about the EPBC Act;
- an explanation of the approach to the accreditation criteria; and
- the accreditation criteria for the environment and environmental approval systems - including high-level outcomes, requirements and considerations.

The accreditation criteria are intended to support outcome-based regulation. Accordingly, it is recognised that states and territories should have flexibility in proposing how they would ensure consistency with the requirements of the EPBC Act.

2. CONTEXT

Overview of the EPBC Act

The EPBC Act is the Australian Government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important matters of national environmental significance.¹ The nine matters of national environmental significance are: World Heritage properties, National Heritage places, wetlands of international importance, listed threatened species and ecological communities, listed migratory species, protection of the environment from nuclear actions, the Commonwealth marine environment, the Great Barrier Reef Marine Park and a water resource, in relation to coal seam gas development and large coal mining development. The EPBC Act also provides protection in relation to other matters, specifically, actions taken by Commonwealth agencies;² and actions on or likely to have a significant impact on Commonwealth areas (land and marine)³ and Commonwealth Heritage places outside of the Australian jurisdiction.

The EPBC Act enables the Australian Government to join with the states and territories in providing a national scheme of environment and heritage protection and biodiversity conservation.⁴ It is also a statutory mechanism to ensure that Australia meets its obligations under key international environmental conventions.

¹ Seven of the nine matters of national environmental significance were first identified in the 1997 *COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment*. The Great Barrier Reef Marine Park was added in 2009 and a water resource, in relation to coal seam gas development and large coal mining development was added in 2013.

² EPBC Act section 49(1) provides that a bilateral agreement does not have any effects in relation to these actions unless the agreement expressly provides otherwise.

³ EPBC Act section 49(1) provides that a bilateral agreement does not have any effects in relation to these areas unless the agreement expressly provides otherwise. Further, under EPBC Act section 49(2), a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.

⁴ See also the 1997 *COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment*.

Figure 1 – Objects of the EPBC Act

The objects of the EPBC Act are to:⁵

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

All jurisdictions are committed to the principles of ecologically sustainable development through the *Intergovernmental Agreement on the Environment 1992*. The EPBC Act incorporates these principles.⁶

Figure 2 – Principles of ecologically sustainable development

The following are principles of ecologically sustainable development:

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

⁵ EPBC Act section 3.

⁶ EPBC Act section 3A.

A risk-based threshold for environmental regulation

The EPBC Act adopts a risk-based approach in setting a 'significant impact' threshold for regulation. This means that the Act requires the referral of proposed actions that are likely to have a significant impact on a matter protected under the Act. It follows that state and territory assessment and approval systems accredited under bilateral agreements need only cover actions that cross this threshold.

Bilateral agreements

The EPBC Act provides various mechanisms to minimise duplication of state and territory environmental assessment and approval systems.⁷ The most comprehensive of these mechanisms are bilateral agreements, which are set out in Part 5 of the EPBC Act (refer Figure 3).

Figure 3 – Objects of EPBC Act Part 5 - Bilateral Agreements

The object of Part 5 is to provide for bilateral agreements between the Commonwealth and a state or self-governing territory that:

- a) protect the environment; and
- b) promote the conservation and ecologically sustainable use of natural resources; and
- c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and
- d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the state or territory (and vice versa).

Bilateral agreements allow the Commonwealth, subject to certain requirements, to accredit the environmental management systems of states and territories to regulate impacts on matters of national environmental significance. There are two types of bilateral agreement:

- an assessment bilateral agreement that may declare that actions assessed in a specified manner by a state or territory need not be assessed under the EPBC Act,⁸ thus minimising duplication between Commonwealth and state or territory assessments; and
- an approval bilateral agreement that may declare that actions approved in accordance with accredited state or territory approval systems do not need Commonwealth approval under the EPBC Act.⁹

Bilateral agreements relating to environmental assessment have existed between the Commonwealth and all the states and territories but there are no approval bilateral agreements currently in place. The accreditation of approval regimes would, necessarily, incorporate assessment processes which relate to these approvals.

⁷ These include bilateral agreements accrediting both state and territory assessment and/or approval processes, individual accreditations of project assessment processes, conservation agreements and strategic assessments.

⁸ EPBC Act section 47(1).

⁹ EPBC Act section 46(1).

The accreditation criteria in this document are focussed on the development of approval bilateral agreements. Existing assessment bilateral agreements will be updated and/or expanded where appropriate, with willing states and territories.

The EPBC Act requirements that the Minister must be satisfied of before entering into an approval bilateral agreement are listed in sections 4 and 5 of this document.

Accreditation of processes and arrangements

Two separate decisions are required to give effect to approval bilateral agreements under Part 5 of the EPBC Act. First, the decision to enter into the agreement and second, the decision to accredit state and territory environmental approval systems. Further, there are two types of approval systems that can be accredited for the purposes of a bilateral agreement: an *authorisation process* and a *management arrangement*. Both terms are defined in section 528 of the EPBC Act.

An authorisation process¹⁰ can be accredited in writing by the Minister¹¹ for the purposes of a bilateral agreement if:

- the authorisation process is set out, wholly or partly, in a law of the state or territory that is a party to the agreement or an instrument made under such a law, or is made, wholly and partly, under such a law;
- the relevant state or territory law and the process is identified in or under the Agreement;
- the authorisation process meets the criteria set out in the EPBC Act and the EPBC Regulations; and
- if there are one or more national environmental standards—the authorisation process is not inconsistent with those standards.

A management arrangement can be accredited in writing by the Minister¹² for the purposes of a bilateral agreement if:

- the management arrangement is in force under a law of the state or territory that is a party to the agreement;
- the relevant state or territory law is identified in or under the agreement;
- the management arrangement meets the criteria set out in the EPBC Act and EPBC Regulations; and
- if there are one or more national environmental standards—the management arrangement is not inconsistent with those standards.

¹⁰ This reflects the amended definition of ‘authorisation process’ as proposed in the EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 17 of the Bill (section 528).

¹¹ EPBC Act section 46(2A)(b).

¹² EPBC Act section 46(2)(b).

When accrediting a management arrangement or authorisation process for the purposes of a bilateral agreement, the Minister must not give preference to one state or part of a state over another state or part of a state.¹³

In this document, state and territory environmental approval systems, such as a bilaterally accredited authorisation process or a bilaterally accredited management arrangement, are referred to as accredited processes or arrangements.

Figure 4 provides a summary, not a complete list, of the overarching criteria that the Minister must be satisfied of before he or she can accredit any state or territory environmental approval system. The EPBC Act requirements that the Minister must be satisfied of before accrediting a state or territory process or arrangement are listed in sections 4 and 5 of this document.

¹³ EPBC Act section 46(9).

Figure 4 – Criteria for accrediting environmental approval systems

In general terms, the Minister may accredit an authorisation process or management arrangement only if the Minister is satisfied that:

- if there are one or more national environmental standards the accredited process or arrangement is not inconsistent with those standards;¹⁴
- there has been or will be adequate assessment of the impacts that actions approved in accordance with the accredited process or arrangement have or are likely to have on matters of national environmental significance covered by the relevant bilateral agreement;¹⁵
- actions approved in accordance with the accredited process or arrangement will not have unacceptable or unsustainable impacts on any of the matters of national environmental significance covered by the relevant bilateral agreement;¹⁶
- the accredited process or arrangement is not inconsistent with Australia's obligations under each of the relevant international agreements;¹⁷
- the accredited process or arrangement will promote management of protected areas such as World Heritage properties, National Heritage places and Ramsar wetlands in accordance with management principles adopted under the Act;¹⁸
- the accredited process or arrangement will promote the survival and/or enhance the conservation status of any relevant listed threatened species, listed threatened ecological community or listed migratory species;¹⁹
- the accredited process or arrangement is not inconsistent with any relevant management plans, threat abatement plans or recovery plans;²⁰
- the accredited process or arrangement meets the requirements or criteria (if any) prescribed by the EPBC Regulations.²¹

In making these decisions, the Minister must have had regard to any approved conservation advice for the relevant listed threatened species and ecological communities.²²

In making these decisions, the Minister must have considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.²³

¹⁴ EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 1, Item 1 of the Bill (section 46(3)(aa)).

¹⁵ EPBC Act section 46(3)(b).

¹⁶ EPBC Act section 46(3)(c).

¹⁷ EPBC Act sections 51(1)(a), 51(2)(a), 52(1)(a), 52(2)(a), 53(1)(a), 53(2)(a), 54(1)(a), 54(2)(a).

¹⁸ EPBC Act sections 51(1)(b), 51(2)(b), 51A(1)(a), 51A(2), 52(1)(b), 52(2)(b).

¹⁹ EPBC Act sections 53(1)(b), 53(2)(b), 54(1)(b), 54(2)(b).

²⁰ EPBC Act sections 53(1)(c), 53(2)(c).

Proposed approach to achieving flexibility

Each jurisdiction may propose a set of processes or arrangements for accreditation that combine legislative provisions with plans and policies. Each jurisdiction's proposal will necessarily be different, reflecting their respective circumstances, needs and interests. As a matter of principle, a comprehensive and flexible approach is much more likely to deliver acceptable outcomes than a regulatory approach that involves only the accreditation of a particular legislative process. When accrediting the processes or arrangements, the Minister may consider any other matter he or she considers relevant.²⁴

Bilateral agreements can encompass a broad range of cooperative actions to protect and conserve the environment while improving the efficiency of environmental regulation. A comprehensive and flexible approach could be achieved, and the Minister could therefore be satisfied that statutory preconditions to bilateral agreements are met, if the relevant state or territory had, through the bilateral agreement, agreed to implement plans and policies designed to secure the long-term conservation of relevant matters of national environmental significance. These might be in any combination and sourced in Commonwealth or state or territory law.

For example, for a World Heritage property, a state or territory might agree to implement its own plan of management for the property that had been accredited by the Minister under the EPBC Act. For certain migratory species, the state or territory might agree to protect or conserve critical habitat. Policies might identify both significant and unacceptable impacts on a particular threatened species, or on threatened species in a particular area. There might be agreement to align investment in recovery actions for maximum effect.

Bilateral agreements may apply, adopt or incorporate other documents existing from time to time, even if the document did not exist when the agreement was signed.²⁵ In addition, the Minister may make minor amendments to bilateral agreements²⁶ and accredited processes or arrangements,²⁷ allowing flexibility for these arrangements to change over time.

National environmental standards

In February 2021 the Australian Government introduced amendments to the EPBC Act to ensure that approval bilateral agreements with states and territories are underpinned by national environmental standards. National environmental standards are set by the Minister, are legally enforceable and will ensure strong environment protection is provided regardless of whether the Australian Government or a state or territory approve a development. As a first step, standards will reflect the current requirements of the EPBC Act. Regular review will ensure standards remain contemporary and reflect the latest information and available data.

²¹ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 11 of the Bill (section 46(3)(a)) and EPBC Act section 50(b).

²² EPBC Act sections 53(1)(ca), 53(2)(d).

²³ EPBC Act section 49A(c).

²⁴ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Item 6 of the Bill (section 46(3)(d)).

²⁵ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Item 9 of the Bill (Section 48AA).

²⁶ EPBC Act section 56A.

²⁷ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 4, Item 1 of the Bill (Sections 46A and 46B).

Standards will deliver outcomes for the environment and heritage and help all decision makers understand expectations when making approval decisions under the EPBC Act. The Minister must be satisfied that accredited state and territory assessment and approval processes are not inconsistent with the standards.

Bilateral agreements must include a commitment from the state or territory that decisions approving the taking of actions will not be inconsistent with any national environmental standards, relative to the scope of the agreement. States and territories will have flexibility in decision making through the consideration of the range of policies, plans, programs or other activities they implement to meet the outcomes described in the standards. Bilateral agreements will also contain assurance measures designed to set out how a state or territory intends to demonstrate they are not inconsistent with the Standards.

Assurance of single touch approvals

Robust assurance mechanisms are important to give the Australian Government and the Australian public confidence in the capacity of bilateral agreements to achieve their stated outcomes. These mechanisms include monitoring, reporting, compliance and review, together with processes under the EPBC Act for revoking or suspending agreements. Assurance can also be supported through exchange of data, shared analysis and joint development of responses to adverse trends.

To provide oversight and rigorous assurance of the single touch approval system, the Australian Government is establishing an Environment Assurance Commissioner. The Commissioner will be an independent statutory position, with the main functions of monitoring or auditing (or both): the operation of bilateral agreements; environmental assessments and approvals under the EPBC Act; and the actions taken to monitor compliance with EPBC Act Parts 3, 7 and 9. The Commissioner's functions in relation to bilateral agreements complement the robust assurance mechanisms that will be contained in bilateral agreements. The operation of the Commissioner will be transparent, as workplans and audit reports will be publicly available on the internet and annual reports tabled in Parliament.

3. APPROACH TO ACCREDITATION CRITERIA

These accreditation criteria will be used as the basis for benchmarking state or territory processes or arrangements for accreditation, but also include relevant guidance on bilateral agreements. The accreditation criteria first set out environmental outcomes and environmental approval systems' outcomes, then requirements to be addressed in the bilateral agreements or through the accredited processes or arrangements for these outcomes. In doing so, it also describes considerations that may be taken into account by the Minister. The national environmental standards also support the Minister to be satisfied that state and territory processes and arrangements are supporting national environmental outcomes.

Table 1 shows the approach in the document to setting out the outcomes, requirements and considerations.

Table 1 - Explanation of outcomes, requirements and considerations in the accreditation criteria

Outcome: the desired environmental outcome or environmental approval system outcome

Requirements:

The requirements consist of the requirements under Part 5 of the EPBC Act. Requirements are the mandatory factors the Minister must take into account when determining whether he or she can be satisfied tests to enter an approval bilateral agreement or accredit a process or arrangement (refer Figure 4) will be met.

Considerations:

The considerations provide additional guidance to states and territories on factors that the Minister may take into account when determining whether he or she can be satisfied that the tests to enter an approval bilateral agreement or accredit a process or arrangement (refer Figure 4) will be met. These considerations are those that currently guide decisions made by the Commonwealth and are informed by the requirements under other parts of the EPBC Act, Commonwealth policy and practice.

4. ENVIRONMENTAL ACCREDITATION CRITERIA

All matters of national environmental significance

Outcome: To support the sustainable, long-term conservation of Australia's unique biodiversity and heritage and the important social, economic, cultural and environmental benefits it provides.

Requirements:

1. Bilateral agreements provide for:
 - a. the protection of the environment, especially those aspects of the environment that are matters of national environmental significance.²⁸
 - b. the protection and conservation of heritage.²⁹
2. Bilateral agreements promote:
 - a. ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.³⁰
 - b. the conservation of biodiversity.³¹
3. A bilateral agreement is a written agreement between the Commonwealth and a state or a self-governing territory that:
 - a. provides for one or more of the following:
 - i. protecting the environment;
 - ii. promoting the conservation and ecologically sustainable use of natural resources;
 - iii. ensuring an efficient, timely and effective process for environmental assessment and approval of actions;
 - iv. minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the state or territory (or vice versa); and
 - b. is expressed to be a bilateral agreement.³²
4. A bilateral agreement must not contain a provision that:³³
 - a. relates to an action prescribed for the purposes of subsection 25(1); and
 - b. has the effect of giving preference to one state or part of a state over another state or part of a state for prescribed actions taken:

²⁸ EPBC Act sections 3(1)(a) and 50(a).

²⁹ EPBC Act sections 3(1)(ca) and 50(a).

³⁰ EPBC Act sections 3(1)(b) and 50(a).

³¹ EPBC Act sections 3(1)(c) and 50(a).

³² EPBC Act section 45(2).

³³ EPBC Act section 56 sets out specific requirements in relation to bilateral agreements for prescribed actions.

- i. for the purposes of trade or commerce between Australia and another country or between two states; or
 - ii. by a constitutional corporation.
- 5. Actions approved under accredited processes or arrangements will not have unacceptable or unsustainable impacts on relevant protected matters³⁴ covered by the agreement.³⁵

Examples of proposals that would have unacceptable or unsustainable impacts on a matter of national environmental significance and could not be approved may include, but are not limited to:

- *a proposal that would destroy a breeding population of a listed species such that the species is likely to be listed in a higher category of endangerment;*
- *a proposal that would cause irreversible loss of any critical part of the ecological character of a Ramsar wetland; or*
- *a proposal that would cause a substantial loss of any of the values for which a National Heritage Place was listed.*

Considerations:

- 6. Decision-makers seek³⁶ and, in considering whether or not to approve an action and what conditions to attach to the approval, take into account³⁷ advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in relation to coal seam gas and large coal mining developments likely to have a significant impact on water resources.³⁸
- 7. The ‘avoid, mitigate, offset’ hierarchy of principles is applied in guiding the assessment and approval of actions.³⁹
- 8. The ‘avoid, mitigate, offset’ hierarchy of principles involves:
 - a. avoidance of impacts on protected matters, for example through comprehensive planning and suitable site selection;
 - b. after all reasonable avoidance measures have been put in place, mitigation of remaining impacts. Avoidance and mitigation can reduce and, in some cases, remove the need for offsets. Offsets should not be considered until all reasonable avoidance and mitigation measures are considered;

³⁴ The matters protected are listed in section 34 of the EPBC Act.

³⁵ EPBC Act Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Item 5 of the Bill (section 46(3)(c)).

³⁶ EPBC Act section 131AB.

³⁷ EPBC Act section 136(2)(fa).

³⁸ Note that this also applies to approval decisions relating to controlling provisions other than the ‘water trigger’.

³⁹ Section 1(a) of Article 14 (Impact Assessment and Minimizing Adverse Impacts) of the *Convention on Biological Diversity* states that parties shall, as far as possible and as appropriate, introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures. The Australian Government policy ‘EPBC Act Environmental Offsets Policy’ informs the use of environmental offsets under the EPBC Act.

- c. after all reasonable avoidance and mitigation measures have been considered, an assessment is made of any remaining, or 'residual', impacts on matters of national environmental significance, and whether those impacts are acceptable; and
 - d. only after residual impacts have been mitigated as far as possible, may environmental offsetting measures be considered. Offsets achieve long-term environmental outcomes for matters protected under the EPBC Act and are consistent with either the EPBC Act Environmental Offsets Policy, or another policy accredited by the Minister as achieving the objects of the EPBC Act to an equivalent or better level.
9. In deciding whether to accredit processes or arrangements relating to matters of national environmental significance, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁴⁰ (See the example under 'Proposed approach to achieving flexibility'.)

Listed threatened species and ecological communities

Outcome: Threatened species and ecological communities are protected, conserved, managed and recovered over time.

Requirements:

10. A bilateral agreement containing a provision relating to a listed threatened species or listed threatened ecological community may be entered into only if:⁴¹
- a. the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:⁴²
 - i. the Convention on Biological Diversity (CBD); or
 - ii. the Apia Convention;⁴³ or
 - iii. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and
 - b. the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each relevant species or community to which the provision relates; and
 - c. the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and

⁴⁰ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁴¹ EPBC Act section 53(1) sets out specific requirements in relation to bilateral agreements for listed threatened species and ecological communities.

⁴² See Attachment A for an overview of these conventions.

⁴³ The Apia Convention was suspended with effect from 13 September 2006 and Australia therefore has no current international obligations under the Convention. Nevertheless, the obligations under the Convention will be taken into consideration.

- d. the Minister has had regard to any approved conservation advice for the species or community; and
 - e. the provision meets the requirements (if any) prescribed by the regulations.
11. Processes or arrangements may be accredited for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if: ⁴⁴
- a. the Minister is satisfied that the process or arrangement is not inconsistent with Australia's obligations under: ⁴⁵
 - i. the CBD; or
 - ii. the Apia Convention; ⁴⁶ or
 - iii. the CITES; and
 - b. the Minister is satisfied that the process or arrangement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
 - c. the Minister is satisfied that the process or arrangement is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
 - d. the Minister has had regard to any approved conservation advice for the species or community.

Considerations:

12. In deciding whether to accredit processes or arrangements relating to a listed threatened species or listed threatened ecological community, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans. ⁴⁷

Listed migratory species

Outcome: Migratory species are protected, conserved and managed within Australia.

Requirements:

13. A bilateral agreement including a provision relating to a listed migratory species may be entered into only if: ⁴⁸

⁴⁴ EPBC Act section 53(2) of the EPBC Act sets out specific requirements in relation to accrediting a process or arrangement for listed threatened species and ecological communities.

⁴⁵ See Attachment A for an overview of these conventions.

⁴⁶ The Apia Convention was suspended with effect from 13 September 2006 and Australia therefore has no current international obligations under the Convention. Nevertheless, the obligations under the Convention will be taken into consideration.

⁴⁷ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁴⁸ EPBC Act section 54(1) sets out specific requirements in relation to bilateral agreements for listed migratory species.

- a. the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:⁴⁹
 - i. the Bonn Convention;
 - ii. China Australia Migratory Birds Agreement (CAMBA);
 - iii. Japan Australia Migratory Birds Agreement (JAMBA);
 - iv. an international agreement approved under subsection 209(4) of the EPBC Act;⁵⁰ and
 - b. the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates; and
 - c. the provision meets the requirements (if any) prescribed by the regulations.
14. Processes or arrangements may be accredited for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if:⁵¹
- a. the Minister is satisfied that the process or arrangement is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:⁵²
 - i. the Bonn Convention;
 - ii. CAMBA;
 - iii. JAMBA;
 - iv. an international agreement approved under subsection 209(4) of the EPBC Act;⁵³ and
 - b. the Minister is satisfied that the process or arrangement will promote the survival and/or enhance the conservation status of each species to which the provision relates.

Considerations:

15. In deciding whether to accredit processes or arrangements relating to a listed migratory species, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁵⁴

⁴⁹ See Attachment B for an overview of these conventions.

⁵⁰ Including Republic of Korea Australia Migratory Birds Agreement (ROKAMBA).

⁵¹ Section 54(2) of the EPBC Act sets out specific requirements in relation to accrediting a process or arrangement for listed migratory species.

⁵² See Attachment B for an overview of these conventions.

⁵³ Including ROKAMBA.

⁵⁴ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

Wetlands of international importance

Outcome: The ecological character of each Ramsar wetland of international importance is maintained through the conservation, management and wise use of the wetland, having regard to ecologically sustainable development.

Requirements:

16. A bilateral agreement containing a provision relating to a declared Ramsar wetland may be entered into only if:⁵⁵
 - a. the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - b. the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles;⁵⁶ and
 - c. the provision meets the requirements (if any) prescribed by the regulations.
17. Processes or arrangements may be accredited for the purposes of a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:⁵⁷
 - a. the Minister is satisfied that the process or arrangement is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - b. the Minister is satisfied that the process or arrangement will promote the management of the wetland in accordance with the Australian Ramsar management principles.⁵⁸
18. An action should not be approved under an accredited process or arrangement if it would be inconsistent with maintaining the ecological character or providing for the conservation and sustainable use of the wetland.⁵⁹

Considerations:

19. When deciding whether to grant an approval and attach conditions relating to a Ramsar wetland, the decision-maker does not act inconsistently with Australia's obligations under the Ramsar Convention.⁶⁰
20. A state or territory uses best endeavours to co-operatively prepare and implement management plans for Ramsar wetlands that are not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles.⁶¹

⁵⁵ EPBC Act section 52(1) sets out specific requirements in relation to bilateral agreements for Ramsar wetlands.

⁵⁶ See Attachment D for an overview of Australian Ramsar management principles.

⁵⁷ EPBC Act section 52(2) sets out specific requirements in relation to accrediting a process or arrangement for Ramsar wetlands.

⁵⁸ See Attachment D for an overview of Australian Ramsar management principles.

⁵⁹ Australian Ramsar management principles, clause 3.04. Subsection 52(2)(b) requires the Minister to be satisfied that a process or arrangement relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.

⁶⁰ EPBC Act section 138.

⁶¹ Under EPBC Act section 333(2), the Commonwealth must use its best endeavours in cooperation with the state or territory to ensure that management plans for Ramsar wetlands are prepared and implemented.

21. In deciding whether to accredit processes or arrangements relating to a declared Ramsar wetland, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁶²

National Heritage

Outcome: The National Heritage values of Australia's National Heritage places are identified, protected, conserved, presented and transmitted to future generations.

Requirements:

22. A bilateral agreement containing a provision relating to a National Heritage place may be entered into only if:⁶³
- a. the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles;⁶⁴ and
 - b. the provision meets the requirements (if any) prescribed by the regulations.
23. Processes or arrangements may be accredited for the purposes of a bilateral agreement containing a provision relating to a National Heritage place only if the Minister is satisfied that the process or arrangement will promote the management of the place concerned in accordance with the National Heritage management principles.⁶⁵
24. Where a management plan for a National Heritage place is proposed for accreditation, the management plan and the law under which it is in force meet the criteria prescribed in Part 2B of the EPBC Regulations.⁶⁶
25. Indigenous peoples are recognised in accredited processes or arrangements as the primary source of information on the value of their heritage.⁶⁷

Considerations:

26. When deciding whether to grant an approval and attach conditions relating to a National Heritage place, the decision-maker does not act inconsistently with the National Heritage management principles, an agreement to which the Commonwealth is party or a plan that has been prepared for the management of that place.⁶⁸

⁶² EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁶³ EPBC Act section 51A(1).

⁶⁴ See Attachment E for an overview of National Heritage management principles.

⁶⁵ EPBC Act section 51A(2).

⁶⁶ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 11 of the Bill (section 46(3)(a)).

⁶⁷ National Heritage management principles, clause 6. Subsection 51A(2) requires the Minister to be satisfied that a process or arrangement relating to National Heritage places promotes the management of the place in accordance with the National Heritage management principles.

⁶⁸ EPBC Act section 137A.

27. A state or territory uses best endeavours to co-operatively prepare and implement management plans for National Heritage places that are not inconsistent with the National Heritage management principles.⁶⁹
28. In deciding whether to accredit processes or arrangements relating to a National Heritage place, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁷⁰

World Heritage properties

Outcomes: The Outstanding Universal Value of World Heritage properties are identified, protected, conserved, presented and transmitted to future generations.

Requirements:

29. A bilateral agreement containing a provision relating to a declared World Heritage property may be entered into only if:⁷¹
 - a. the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - b. the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles;⁷² and
 - c. the provision meets the requirements (if any) prescribed by the regulations.
30. Processes or arrangements may be accredited for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:⁷³
 - a. the Minister is satisfied that the process or arrangement is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - b. the Minister is satisfied that the process or arrangement will promote the management of the property in accordance with the Australian World Heritage management principles.⁷⁴
31. Where a management plan for a World Heritage property is proposed for accreditation, the management plan and the law under which it is in force, meet the criteria prescribed in Part 2B of the EPBC regulations.⁷⁵

⁶⁹ Under EPBC Act section 324X(2), the Commonwealth must use its best endeavours in cooperation with the state or territory to ensure that management plans for these places are prepared and implemented.

⁷⁰ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁷¹ EPBC Act section 51(1) sets out specific requirements in relation to bilateral agreements for World Heritage properties.

⁷² See Attachment H for an overview of Australian World Heritage management principles.

⁷³ EPBC Act section 51(2) sets out specific requirements in relation to accrediting processes or arrangements for World Heritage properties.

⁷⁴ See Attachment H for an overview of Australian World Heritage management principles.

⁷⁵ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 11 of the Bill (section 46(3)(a)).

32. An action should not be approved under an accredited process or arrangement if it would be inconsistent with the protection, conservation, presentation or transmission to future generations of the World Heritage values of the property.⁷⁶

Considerations:

33. When deciding whether to grant an approval and attach conditions relating to a declared World Heritage property, the decision-maker does not act inconsistently with Australia's obligations under the World Heritage Convention, the Australian World Heritage management principles, or a plan that has been prepared for the management of that property.⁷⁷
34. A state or territory uses best endeavours to co-operatively prepare and implement management plans for world heritage properties that are not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles.⁷⁸
35. The state or territory acts in accordance with the *Operational Guidelines for the Implementation of the World Heritage Convention* (the Operational Guidelines), including providing the Commonwealth with any information related to reporting or review requirements of the Operational Guidelines or other requirements related to the operation of the World Heritage Convention.⁷⁹
36. In deciding whether to accredit processes or arrangements relating to a declared World Heritage property, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁸⁰

Protection of the environment from nuclear actions

Outcome: The community and the environment are protected from the harmful effects of radiation and radioactive material that may result from nuclear actions.

Requirements:

37. A bilateral agreement, or an accredited process or arrangement, must not contain a provision that:⁸¹
- a. relates to a nuclear action;⁸² and

⁷⁶ Australian World Heritage management principles, clause 3.04. Subsection 51(2)(b) requires the Minister to be satisfied that a process or arrangement relating to World Heritage promotes the management of the property in accordance with World Heritage management principles.

⁷⁷ EPBC Act section 137.

⁷⁸ Under EPBC Act section 321(2), the Commonwealth must use its best endeavours in cooperation with the state or territory to ensure that management plans for these properties are prepared and implemented.

⁷⁹ Consistent with clause 172 of the *Operational Guidelines for the Implementation of the World Heritage Convention*, the Commonwealth routinely notifies the World Heritage Committee of proposals to undertake or to authorize in an area protected under the Convention major restorations or new constructions which may affect the Outstanding Universal Value of the property.

⁸⁰ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁸¹ EPBC Act section 55 sets out specific requirements in relation to bilateral agreements and accrediting processes or arrangements for nuclear actions.

⁸² Nuclear actions are defined in section 22 of the EPBC Act and Part 2, Division 2.1 of the EPBC Regulations.

- b. has the effect of giving preference to one state or part of a state over another state or part of a state for nuclear actions taken:
 - i. for the purposes of trade or commerce between Australia and another country or between two states; or
 - ii. by a constitutional corporation.

Considerations:

- 38. A state or territory does not allow for the approval of an action relating to the construction or operation of:
 - a. a nuclear fuel fabrication plant;
 - b. a nuclear power plant;
 - c. an enrichment plant; or
 - d. a reprocessing facility.⁸³
- 39. In deciding whether to accredit processes or arrangements relating to a nuclear action, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁸⁴

Commonwealth marine environment

Outcome: The environment of Commonwealth marine areas is protected and sustainably managed.

Considerations:

- 40. In making decisions under accredited processes or arrangements relating to the Commonwealth marine environment, decision makers have regard to any relevant bioregional plans.⁸⁵
- 41. In making decisions under accredited processes or arrangements relating to the Commonwealth marine environment, decision makers must not act inconsistently with any management plans in operation under the EPBC Act for relevant marine reserves.⁸⁶
- 42. In deciding whether to accredit processes or arrangements relating to the Commonwealth marine environment, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁸⁷

⁸³ EPBC Act section 140A provides that the Minister must not approve such actions.

⁸⁴ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁸⁵ EPBC Act section 176(5).

⁸⁶ EPBC Act section 362.

⁸⁷ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

Requirements for threatened and migratory species that are also marine species are addressed above. Migratory species are often one of the key issues for assessment in the marine environment, e.g. whales and other cetaceans.

A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area, which includes the Commonwealth marine environment, unless the agreement expressly provides otherwise.⁸⁸

The Commonwealth anticipates that a bilateral agreement will only relate to actions within state or territory jurisdiction which may have an impact on the Commonwealth marine environment, for example, ocean outfall from a major coastal industrial facility.

Great Barrier Reef Marine Park

Outcomes: The environment, biodiversity and heritage values of the Great Barrier Reef Marine Park are protected and conserved for current and future generations.

Considerations:

43. Actions approved under accredited processes or arrangements outside the Great Barrier Reef Marine Park likely to affect the environment in the Marine Park do not contravene any zoning or other plans under the *Great Barrier Reef Marine Park Act 1975*.
44. In deciding whether to accredit processes or arrangements relating to the Great Barrier Reef Marine Park, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁸⁹

A provision of a bilateral agreement does not have any effect in relation to an action in the Great Barrier Reef Marine Park, unless the agreement expressly provides otherwise.⁹⁰ The Marine Park itself is managed by the Great Barrier Reef Marine Park Authority.

Requirements for the Commonwealth marine areas, World Heritage and National Heritage are addressed above. These requirements will almost always be also relevant to actions relating to the Great Barrier Reef Marine Park.

⁸⁸ EPBC Act section 49(1).

⁸⁹ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

⁹⁰ EPBC Act section 49(1A).

Water resources⁹¹

Outcome: Protection of a water resource, which is or is likely to be significantly impacted by coal seam gas or large coal mining developments, including any impacts of associated salt production and/or salinity.

Requirements:

45. A bilateral agreement relating to water resources must include undertakings by the state or territory that:⁹²
- a. the appropriate state or territory Minister will obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) if an action is likely to have a significant impact on a water resource, including any impacts of associated salt production and/or salinity; and
 - b. in deciding whether or not to approve the action, the decision maker will take into account any relevant advice obtained from the IESC.

Considerations:

46. A bilateral agreement relating to water resources recognises that the Minister may request advice of the IESC in relation to the operation of the bilateral agreement.⁹³
47. In deciding whether to accredit processes or arrangements relating to water resources, the Minister can consider any other matter that the Minister considers relevant, for example, the terms of the bilateral agreement or state or territory policies or plans.⁹⁴

⁹¹ EPBC Act section 34 provides that under sections 24D and 24E, the matter protected under the EPBC Act is a water resource.

⁹² EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 1, Item 5 of the Bill (section 48A(2A)).

⁹³ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 1, Item 6 (section 505D(1)(ba)). This could include advice on the extent to which the state or territory has assessed the impacts and considered the initial advice of the IESC.

⁹⁴ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 5, Items 6 - 8 of the Bill (section 46(3)(d)).

5. ENVIRONMENTAL APPROVAL SYSTEM ACCREDITATION CRITERIA

This section sets out outcomes and related requirements and considerations that go towards delivering overarching outcomes for environmental approval systems. It is the features of these systems that will be used to demonstrate the criteria for entering into a bilateral agreement or accrediting a process or arrangement (refer Figure 4) are met.

Requirements:

48. A. The management arrangement must be in force under a law of the state or territory.⁹⁵

B. The authorisation process must be set out, wholly or partly, in a law of the state or territory that is party to the agreement or an instrument made under such a law, or is made, wholly and partly, under such a law.⁹⁶
49. The bilateral agreement and the process or arrangement for accreditation, as well as the law under which it is in force, must meet the criteria (if any) prescribed by the regulations.⁹⁷
50. For actions approved under an accredited process or arrangement, there has been or will be adequate assessment of the impacts⁹⁸ on each matter of national environmental significance covered by the agreement.⁹⁹
51. A bilateral agreement requires states and territories, and agencies of states and territories, to act in accordance with an accredited management arrangement and not to approve the taking of actions that would be inconsistent with the accredited management arrangement.¹⁰⁰
52. If there are one or more national environmental standards, an accredited process or arrangement is not inconsistent with those standards.¹⁰¹
53. A bilateral agreement provides that, if there are one or more national environmental standards, decisions approving the taking of actions in accordance with the accredited process or arrangement will not be inconsistent with those standards.¹⁰²

Identifying matters of national environmental significance

Outcome: Deliver certainty and efficiency by systematically identifying actions that relate to matters of national environmental significance.

⁹⁵ EPBC Act section 46(2)(a).

⁹⁶ EPBC Act section 46(2A)(a). This reflects the EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 10 of the Bill.

⁹⁷ EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 introduced to Parliament on 27 August 2020: see Schedule 3, Part 2, Item 11 of the Bill (section 46(3)(a)) and EPBC Act section 50(b).

⁹⁸ The EPBC Act defines impact broadly to include direct, indirect and facilitated impacts - refer section 527E.

⁹⁹ EPBC Act section 46(3)(b).

¹⁰⁰ EPBC Act section 46(10).

¹⁰¹ EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 1, Item 1 of the Bill (section 46(3)(aa)).

¹⁰² EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 1, Item 1 of the Bill (section 48A(3A)).

Requirements:

54. In relation to World Heritage properties, a process or arrangement for accreditation should identify the world heritage values of the property that are likely to be affected by the action.¹⁰³
55. In relation to Ramsar wetlands, a process or arrangement for accreditation should identify the parts of the ecological character of the wetland likely to be affected by the action.¹⁰⁴

Considerations:

56. An auditable system identifies whether proposed actions are likely to have a significant impact on each matter protected by a provision in Part 3 of the EPBC Act.
57. Proponents are required to refer screening documentation about the proposed action to the state or territory decision maker for determination as to whether a proposal is likely to have a significant impact on a matter of national environmental significance.¹⁰⁵
58. If screening documentation has not been referred, decision makers are able to require that it be referred if the proposed action is likely to have a significant impact on a matter of national environmental significance.¹⁰⁶
59. A Commonwealth agency may refer a proposal by a third party to the state or territory decision maker for a decision on whether it requires assessment for its likely impacts on matters of national environmental significance.¹⁰⁷
60. Screening documentation meets the requirements of the regulations, including sufficient information to identify all likely impacts on matters of national environmental significance.¹⁰⁸
61. To ensure that proponents do not avoid assessment by 'splitting' projects, decision makers consider whether proposed actions are part of a larger action. Where proposed actions are part of a larger action, the decision maker requires that it be assessed as part of the larger action.¹⁰⁹
62. When determining whether an action is likely to have a significant impact on matters of national environmental significance, decision makers consider information in screening documentation and public comments received¹¹⁰ on those documents.¹¹¹

¹⁰³ EPBC Act section 51(2)(b) requires the Minister to be satisfied that a process or arrangement relating to World Heritage properties promotes the management of the property in accordance with the Australian World Heritage management principles – refer EPBC Regulations Schedule 5, 3.03(a).

¹⁰⁴ EPBC Act section 52(2)(b) requires the Minister to be satisfied that a process or arrangement relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles - refer EPBC Regulations Schedule 6, 3.03(a).

¹⁰⁵ EPBC Act section 68.

¹⁰⁶ EPBC Act section 70.

¹⁰⁷ EPBC Act section 71.

¹⁰⁸ See EPBC Act section 72 and Schedule 2 to the EPBC Regulations.

¹⁰⁹ EPBC Act section 74A.

¹¹⁰ The *Transparent systems and decisions* section sets out guidelines for public consultation.

¹¹¹ EPBC Act section 75(1A).

63. Decision makers have limited power to vary or substitute a decision about whether an action is likely to have a significant impact on matters of national environmental significance.¹¹²

Risk-based assessment

Outcome: Deliver efficiency and transparency by employing assessment approaches that reflect the risk of the proposed action and provide sufficient information for a decision maker to make an informed decision.

Considerations:

64. Where available, assessment approaches (i.e. the level of environmental assessment, however described) reflect the level of risk of the proposed action to matters of national environmental significance and the amount of information available at the commencement of assessment.¹¹³
65. In determining the assessment approach for a proposed action, the decision maker decides on a form of assessment that will allow the decision maker to have sufficient information to make an informed decision whether or not to approve the proposed action and, if so, under what conditions.¹¹⁴

*Examples of risk-based approaches to assessment, based on requirements under the EPBC Act, could include:*¹¹⁵

- *Assessment on the basis of initial screening documentation provided by the proponent.*¹¹⁶ *This approach may be used when environmental risk and the degree of public concern are low, the impacts are expected to be manageable and the level of information about the scale and nature of the impacts is high.*¹¹⁷
- *Assessment on initial screening documentation and further supplementary information provided by the proponent.*¹¹⁸ *This approach may be used when the environmental risk is low to medium and the impacts are expected to be manageable, but further information of a defined nature is required to enable an informed decision.*
- *Assessment by environmental impact statement, public environment report or equivalent form of comprehensive report.*¹¹⁹ *This approach may be used when the environmental risk is medium to high with uncertain or complex impacts.*

¹¹² EPBC Act sections 78 and 78A (see also reconsideration policy at <http://www.environment.gov.au/epbc/publications/epbc-act-policy-reconsideration>)

¹¹³ EPBC Act section 87(3).

¹¹⁴ The notion of having 'enough information to make an informed decision' runs throughout the EPBC Act. See, for example, section 47(4), section 76(3), section 84(3)(c), section 87(4)(d), section 88(5) and section 96A(3)(b).

¹¹⁵ These examples are drawn from Part 8 of the EPBC Act which sets out the assessment approaches available under the EPBC Act. They are also based on Part 3 of the EPBC Regulations which sets out the requirements that apply to setting the level of assessment under an assessment bilateral agreement.

¹¹⁶ EPBC Act, Part 8, Division 3A.

¹¹⁷ EPBC Act section 87(4A) and EPBC Regulations, regulation 5.03A.

¹¹⁸ Part 4 of the EPBC Regulations includes provisions for the way in which referrals must be made, and the information to be contained in referrals. See also EPBC Act, Part 8, Division 4.

¹¹⁹ EPBC Act, Part 8, Divisions 5 and 6.

- *Assessment by public inquiry.*¹²⁰ *This approach may be appropriate where the environmental risk is high and the impacts are uncertain or complex.*

Adequate environmental assessment and approvals based on good policy

Outcome: Deliver certainty, transparency and legally-robust decisions by undertaking environmental assessment that adequately addresses all matters of national environmental significance and making approval decisions based on recognised principles of environmental policy, as set out in the Intergovernmental Agreement on the Environment 1992.¹²¹

Requirements:

66. A bilateral agreement must include an undertaking by the state or territory to ensure that the environmental impacts that the following actions will have or are likely to have on the environment (other than on matters of national environmental significance) are assessed to the greatest extent practicable:
 - a. actions taken in the state or territory by a constitutional corporation;
 - b. actions taken in the state or territory by a person for the purposes of trade or commerce between Australia and another country, between 2 states, between a state and a territory or between 2 territories;
 - c. actions that are taken in the state or territory which are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries; and
 - d. actions taken in the territory (if applicable).¹²²
67. In relation to World Heritage, the likely impacts of an action on the world heritage values of a property are assessed under a statutory environmental impact assessment and approval system.¹²³ The assessment process examines how the Outstanding Universal Values of the property might be affected¹²⁴ and any approval of the action should be subject to conditions that are necessary to ensure protection, conservation, presentation or transmission to future generations of the Outstanding Universal Values of the property.¹²⁵

¹²⁰ EPBC Act, Part 8, Division 7.

¹²¹ Attachment I extracts the principles of environmental policy from the *Intergovernmental Agreement on the Environment 1992*.

¹²² EPBC Act sections 48A(1) and 48A(2).

¹²³ Australian World Heritage management principles, clause 3.02. EPBC Act section 51(2)(b) requires the Minister to be satisfied that a process or arrangement relating to World Heritage properties promotes the management of the property in accordance with the Australian World Heritage management principles.

¹²⁴ Australian World Heritage management principles, clause 3.03(b). EPBC Act section 51(2)(b) requires the Minister to be satisfied that a process or arrangement relating to World Heritage properties promotes the management of the property in accordance with the Australian World Heritage management principles.

¹²⁵ Australian World Heritage management principles, clause 3.05. EPBC Act section 51(2)(b) requires the Minister to be satisfied that a process or arrangement relating to World Heritage properties promotes the management of the property in accordance with the Australian World Heritage management principles.

68. In relation to Ramsar wetlands, the likely impact of an action on the wetland's ecological character is assessed under a statutory environmental impact assessment and approval system.¹²⁶ The assessment process examines how the ecological character of the wetland might be affected¹²⁷ and any approval of the action should be subject to conditions, if necessary, to ensure that the ecological character of the wetland is maintained.¹²⁸

Considerations:

69. To define the matters that must be assessed, terms of reference or guidelines (or equivalent) are issued for each environmental impact statement, public environment report or other equivalent report. They seek to ensure that the report will contain enough information about the action and its relevant impacts to allow the decision-maker to make an informed decision whether or not to approve the taking of the action.¹²⁹
70. The terms of reference or guidelines for an environmental impact statement, public environment report or other equivalent report detail requirements for:
- a. providing sufficient information about the existing environment, the action and its relevant impacts on matters of national environmental significance;
 - b. any feasible alternatives to the proposed action;
 - c. proposed safeguards and mitigation measures;
 - d. providing sufficient information about the environmental record of the proponent; and
 - e. any other relevant information.¹³⁰
71. Where a public inquiry is being conducted, Commissioners or panel members conducting the inquiry have sufficient powers to ensure they can obtain the necessary information to enable comprehensive assessment of matters of national environmental significance. These may include powers to call witnesses, obtain documents, etc.¹³¹
72. All relevant impacts on matters of national environmental significance are identified separately in the environmental impact statement, public environment report or other equivalent report, not simply in the context of impacts on the environment generally.

¹²⁶ Australian Ramsar management principles, clause 3.02. EPBC Act section 52(2)(b) requires the Minister to be satisfied that a process or arrangement relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.

¹²⁷ Australian Ramsar management principles, clause 3.03(b). EPBC Act section 52(2)(b) requires the Minister to be satisfied that a process or arrangement relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.

¹²⁸ Australian Ramsar management principles, clause 3.05. EPBC Act section 52(2)(b) requires the Minister to be satisfied that a process or arrangement relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.

¹²⁹ EPBC Act sections 96A, 101A, 107.

¹³⁰ All the above items reflect requirements set out in Schedule 4 to the EPBC Regulations for matters to be addressed by public environment reports and environmental impact statements.

¹³¹ EPBC Act, Part 8, Division 7 which deals with Inquiries.

This means that impacts¹³² are explicitly assessed for each matter of national environmental significance.¹³³

73. If assessment documentation does not contain sufficient information on the relevant impacts on matters of national environmental significance, decision makers are able to request further information.¹³⁴
74. Proposed actions undergoing assessment are only varied if the variation is substantially the same character as the original action.¹³⁵
75. After an assessment, a recommendation report (or equivalent¹³⁶) is prepared by a government body independent of the proponent for consideration by the decision maker.
76. The recommendation report evaluates the environmental impact assessment (or equivalent) and provides recommendations to the decision maker on whether the proposed action should be approved and, if so, whether any conditions should be attached to the approval.¹³⁷
77. Matters of national environmental significance are dealt with separately and comprehensively in the recommendation report (or equivalent).¹³⁸
78. When deciding whether to grant an approval, the decision maker attaches conditions to an approval if they are necessary or convenient to protect, or repair or mitigate damage to, a matter of national environmental significance to which the approval has effect.¹³⁹
79. When deciding whether to grant an approval and attach conditions, the decision maker has regard to the principles of ecologically sustainable development, including the integration of economic, environmental and social considerations, the precautionary principle, the principle of inter-generational equity, the principle that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making and the principle that improved valuation, pricing and incentive mechanisms should be promoted.¹⁴⁰
80. When deciding whether to grant an approval and attach conditions, the decision maker takes into account all relevant information.¹⁴¹

¹³² Under EPBC Act section 527E, relevant impacts include direct consequences of the action, as well as likely indirect consequences, including those facilitated by a secondary action or person.

¹³³ This consideration may assist the Minister be satisfied under section 46(3) of the EPBC Act that there will be an adequate assessment of the impacts that the action is likely to have on *each* matter of national environmental significance.

¹³⁴ Section 132 of the EPBC Act provides that the Minister may request further information if the Minister believes that he or she does not have enough information to make an informed decision on whether to approve the proposal.

¹³⁵ EPBC Act section 156B.

¹³⁶ Assessment reports / equivalents are defined in EPBC Act sections 93(5), 95C, 100, 105 or 121.

¹³⁷ EPBC Act sections 93, 95C, 100 and 105.

¹³⁸ This consideration may assist the Minister be satisfied under section 46(3) of the EPBC Act that there will be an adequate assessment of the impacts that the action is likely to have on *each* matter of national environmental significance.

¹³⁹ See, for example EPBC Act section 134(1). Other criteria for decision-making appear throughout the EPBC Act.

¹⁴⁰ EPBC Act section 136(2)(a) (general considerations). Also see the extract from the Intergovernmental Agreement on the Environment set out at Attachment I.

¹⁴¹ EPBC Act section 136(2).

Relevant information under the EPBC Act includes:

- *the assessment documentation;*
 - *a recommendation report (or equivalent) from the government agency supervising the preparation of the assessment documentation, including information about economic and social matters;*
 - *any other available and relevant information regarding the impacts the proposed action may have on relevant matters of national environmental significance, such as an expert report commissioned on behalf of the decision maker.*
81. When deciding whether to grant an approval and attach conditions, the decision maker may consider the environmental history of a person when deciding whether to grant an approval and attach conditions.¹⁴²
82. Prior to applying conditions to an action in relation to matters protected under the bilateral agreement, the decision maker considers any other conditions applied for state or territory matters and their consistency with the requirements of the EPBC Act and related policies or guidelines. The decision maker relies on other state or territory conditions to the greatest extent possible when considering what further conditions (if any) to attach to a proposed approval.¹⁴³
83. All conditions of approval are designed to achieve the best possible outcome for the relevant protected matter. The suitability for outcomes-based conditions is determined on a case-by-case basis, incorporating identification of potential risks and in consultation with the proponent. The final decision on the condition-setting approach rests with the decision maker.¹⁴⁴
84. If a proposed variation to an approval would result in a substantial change to the character of an action or a substantial change in the nature of the adverse impacts of the action, the proposed variation will be assessed at an appropriate level as a new proposal.¹⁴⁵

Transparent systems and decisions

Outcome: Systems are transparent and offer appropriate opportunities for public engagement, and decisions are legally robust.

Requirements:

85. Bilateral agreements promote a cooperative approach to the protection and management of the environment including governments, the community, landholders and Indigenous peoples.¹⁴⁶
86. Bilateral agreements recognise the role of Indigenous peoples' in the conservation and ecologically sustainable use of Australia's biodiversity.¹⁴⁷

¹⁴² EPBC Act section 136(4).

¹⁴³ EPBC Act condition-setting policy <http://environment.gov.au/epbc/publications/condition-setting-policy>

¹⁴⁴ EPBC Act outcomes based conditions policy: <http://environment.gov.au/epbc/publications/outcomes-based-conditions-policy-guidance>

¹⁴⁵ EPBC Act section 156B.

¹⁴⁶ EPBC Act sections 3(1)(d) and 50(a).

¹⁴⁷ EPBC Act sections 3(1)(f) and 50(a).

87. Bilateral agreements promote the co-operative use of Indigenous peoples' knowledge of biodiversity¹⁴⁸ and indigenous heritage.¹⁴⁹
88. There is adequate opportunity for public consultation throughout the assessment and approval process.¹⁵⁰

Considerations:

89. Decisions are free from bias, transparent, consistent and subject to review by a court.¹⁵¹

Independent statutory decision maker

90. The decision maker makes an independent, statutory decision whether to approve a proposed action based on statutory criteria.¹⁵²

Public consultation

91. The public has access to a comprehensive range of documentation relating to the proposed action.¹⁵³ To ensure that documentation relating to matters of national environmental significance is free and easily accessible by all members of the Australian community, states and territories publish this documentation on the Internet.

Examples of documentation that may be provided for public consultation include:

- *initial screening or referral documentation*,¹⁵⁴
 - *draft guidelines or terms of reference (if applicable)*,¹⁵⁵
 - *assessment documentation (such as draft public environment reports and environmental impact statements)*,¹⁵⁶ and
 - *proposed approval decisions and conditions*.¹⁵⁷
92. Special provision is made for groups with particular communication needs.¹⁵⁸

¹⁴⁸ EPBC Act sections 3(1)(g) and 50(a), also 49A(c).

¹⁴⁹ EPBC Act section 51A(1)(a) requires the Minister to be satisfied the agreement will be in accordance with the National Heritage Management Principles. Clause 6 of the principles states active participation of Indigenous peoples in identification, assessment and management is integral to the effective protection of indigenous heritage values.

¹⁵⁰ The Australian World Heritage management principles and the Australian Ramsar management principles provide that an assessment process should provide adequate opportunity for public consultation (see clause 3.03(c)), and EPBC Act sections 51(2)(b) and 52(2)(b) require the Minister to be satisfied the process or arrangement will promote these principles.

¹⁵¹ This reflects law and practice under the EPBC Act and other Commonwealth laws relating to administrative law such as the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

¹⁵² Criteria are set out in the EPBC Act section 136. Under the EPBC Act, the Minister is a statutory decision maker and must not act under the direction of any other person, including Cabinet or another Minister.

¹⁵³ Part 16 of the EPBC Regulations sets out requirements for publication under the EPBC Act.

¹⁵⁴ EPBC Act section 74(3).

¹⁵⁵ EPBC Act sections 97(5) and 102(5).

¹⁵⁶ EPBC Act sections 95, 98 and 103.

¹⁵⁷ EPBC Act sections 131A(a) and 133(3).

¹⁵⁸ EPBC Regulations, subregulation 16.04A(1) specifies that a proponent must ensure that a person with special needs has reasonable access to the material in regulation 16.04 (publication of notices relating to assessments) in a form that satisfies the person's needs. In approving the notice before it is first published under the EPBC Act, the Secretary ensures that it includes the contact details where people with special needs can access help in accessing the material.

93. The public is given sufficient time to provide comment on the documentation.¹⁵⁹
94. Public comments are incorporated into the assessment and considered by the decision maker.¹⁶⁰
95. States and territories have appropriate mechanisms for engaging with Indigenous peoples regarding assessment and approval of proposed actions,¹⁶¹ including:¹⁶²
 - a. identifying and acknowledging all relevant affected Indigenous peoples and communities;
 - b. committing to early engagement at the pre-referral stage;
 - c. building trust through early and ongoing communication for the duration of the project, including approvals, implementation and future management;
 - d. setting appropriate timeframes for consultation; and
 - e. demonstrating cultural awareness.

Transparency of decision making

96. If an action is approved, conditions of approval relating to matters protected under the EPBC Act are identified as such.¹⁶³
97. All decisions and the relevant information on which they are based are published on the Internet as soon as practicable after being made.¹⁶⁴
98. Statements of reasons are made available,¹⁶⁵ on request from an aggrieved party, for key decision points within the process or arrangement for accreditation.¹⁶⁶
99. Policy documents informing decision makers are published.¹⁶⁷

¹⁵⁹ The EPBC Act sets out minimum periods for comment. See, for example, sections 93(3), 95A(3), 98(3) and 103(3).

¹⁶⁰ The EPBC Act requires that public comment must be taken into account. See, for example, sections 93(4), 95B(1), 99(2) and 104(2).

¹⁶¹ EPBC Act section 49A(c).

¹⁶² These are the principles for best practice consultation in the guidance for proponents available at <http://environment.gov.au/epbc/publications/engage-early>

¹⁶³ See EPBC Act section 134, particularly subsections (1) and (2).

¹⁶⁴ EPBC Regulations, regulation 16.05. All approval decisions under Part 9 of the EPBC Act are published on the Internet at: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referrals;limit=7

¹⁶⁵ EPBC Act policy statement, Statement of Reasons - refer <https://www.environment.gov.au/epbc/publications/epbc-act-policy-statement-statements-reasons>

¹⁶⁶ For example, decisions under the EPBC Act for which reasons can be sought include: decisions on whether a proposed action is likely to have a significant impact on a matter of national environmental significance; whether an action is clearly unacceptable; and decisions on whether actions should be approved and, if so, what conditions should be attached.

¹⁶⁷ As a result of changes to the *Freedom of Information Act 1982 (FOI Act)*, Australian Government agencies which are subject to the FOI Act, are required to publish a range of information on their websites as part of an Information Publication Scheme. Information that must be published includes operational information (which is information that assists the agency to exercise its functions or powers in making decisions or recommendations that affect members of the public). This includes the agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.

Review by courts

100. There are rights of review by courts together with extended standing under state or territory law at least equivalent to those existing for decisions under the EPBC Act.¹⁶⁸

Assurance

Outcome: The bilateral agreement must include assurance mechanisms so that governments and the community will know that the accreditation criteria, together with environmental outcomes, are maintained.

Requirements:

Review and audit

101. A bilateral agreement must be reviewed at least once every 5 years while it is in effect¹⁶⁹ and may include provisions for review of all or part of the agreement.¹⁷⁰
102. A bilateral agreement must include a provision recognising that, under the *Auditor-General Act 1997* (Cth), the Auditor-General may audit the operations of the Commonwealth public sector¹⁷¹ and may include provisions for auditing and monitoring on the operation and effectiveness of all or part of the agreement.¹⁷²

Reporting

103. Bilateral agreements assist in the co-operative implementation of Australia's international environmental responsibilities.¹⁷³
104. A bilateral agreement recognises that reports of the reviews required under the EPBC Act must be provided to the relevant Minister of the state or territory and must be published.¹⁷⁴

Suspension or revocation

105. A bilateral agreement recognises that the Minister may suspend or revoke an agreement if he or she is not satisfied that the state or territory:
- a. has complied or will comply with the agreement; and
 - b. has given effect, and will give effect, to the agreement in a way that accords with the objects and Part 5 of the Act and promotes the discharge of Australia's international obligations relevant to a matter covered by the agreement;¹⁷⁵ or

¹⁶⁸ Review rights in relation to decisions under the EPBC Act to approve individual developments stem from the *Administrative Decisions (Judicial Review) Act 1977* (Cth) which provides for judicial review, including of decisions under the EPBC Act. Section 487 of the EPBC Act provides for extended standing in relation to judicial review.

¹⁶⁹ EPBC Act section 65(2). Section 65(1) of the EPBC Act provides that a bilateral agreement ceases to have effect for the purpose of the EPBC Act at the time specified in the agreement.

¹⁷⁰ EPBC Act section 48(1)(e)(iii).

¹⁷¹ EPBC Act section 48A(4).

¹⁷² EPBC Act section 48(1)(e)(ii).

¹⁷³ EPBC Act sections 3(1)(e) and 50(a).

¹⁷⁴ EPBC Act sections 65(2) and (3).

¹⁷⁵ EPBC Act section 59(1).

- c. has given effect, or will give effect, to the agreement in a way that is inconsistent with a national environmental standard.¹⁷⁶

106. A bilateral agreement recognises that the Minister may suspend an agreement for a short period if the Minister is satisfied that the relevant state or territory is not complying with the agreement, or will not comply with it, and as a result of the non-compliance, a significant impact is occurring or imminent on a relevant matter of national environmental significance.¹⁷⁷

*Note: EPBC Act sections 57 - 64 set out the processes for suspending and ending the effect of a bilateral agreement. Cancellation, suspension or expiry of a bilateral agreement does not affect individual actions approved under the bilateral agreement.*¹⁷⁸

Considerations:

Review and audit

- 107. Administrative arrangements coordinate efficient implementation of the agreement and allow for early discussion regarding implementation.¹⁷⁹
- 108. A bilateral agreement provides for regular ongoing review, with provision for review by independent reviewers or auditors, including the Environment Assurance Commissioner.¹⁸⁰

For example, agreements could be jointly reviewed within 2 years of commencement to ensure the agreement is implemented and working effectively. Agreements could also be reviewed 5 years after commencement, involving possible third-party review.

Information exchange

- 109. A bilateral agreement includes provisions for the provision of information by one party to the other.¹⁸¹
- 110. A bilateral agreement provides for a comprehensive exchange of data, including data held generally by government and data obtained through environmental assessment or through compliance with conditions of approval for individual projects.¹⁸² This provides a common information base for the parties to jointly:
 - a. understand the condition of the environment, particularly the conservation status of matters of national environmental significance and how that condition is changing in light of both approved actions and natural events; and
 - b. co-operate in responding to pressures on the environment, for example by investing in recovery action.

¹⁷⁶ EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 1, Item 5 of the Bill (section 59(1A)).

¹⁷⁷ EPBC Act section 60.

¹⁷⁸ EPBC Act sections 64 and 65A.

¹⁷⁹ Efficient implementation can be seen through EPBC Act section 48(1)(b), which allows that a bilateral agreement include provisions for achieving the objectives for part 5 or section 48(1)(e) which allows for provisions relating to the operation of the whole or particular provisions of the agreement.

¹⁸⁰ EPBC Act, section 48(1)(e)(iii) allows that a bilateral agreement may include provisions for review

¹⁸¹ EPBC Act, section 48(1)(c).

¹⁸² EPBC Act section 48(1)(c).

111. Data collected by proponents under conditions of approval are in a form able to be accessed, shared and combined with other sources, including national databases.

Note: Agreed standards for data collection and storage are to be developed to facilitate data sharing and analysis.

Reporting

112. The states and territories provide information to allow the Commonwealth to meet its annual reporting obligations under the EPBC Act,¹⁸³ including an analysis of how bilateral agreements have been implemented.¹⁸⁴
113. States and territories respond to reasonable requests from the Commonwealth to supply information relating to accredited assessments and/or approvals covered by a bilateral agreement.¹⁸⁵
114. Reports of reviews, including audits, are published.¹⁸⁶

For example, annual reporting may include matters such as the number and nature of proposals assessed involving matters protected under the EPBC Act; the controlling provisions involved in such projects; the types of assessment methods applied; outcomes of the assessment and conditions applied; and environmental outcomes achieved for the reporting period and in relation to particular projects.

Compliance role of states and territories

115. States and territories maintain an appropriate system to ensure compliance by proponents with conditions of approval applied under the accredited process or arrangement that relate to matters of national environmental significance.¹⁸⁷
116. Findings of audits and other appropriate information (e.g. monitoring data), including management, mitigation or offsets plans relating to matters of national environmental significance are published.¹⁸⁸

¹⁸³ Section 516 of the EPBC Act provides that the Secretary must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of the EPBC Act for the 12 months ending on that 30 June.

¹⁸⁴ EPBC Act section 48(1)(e)(ii) provides that bilateral agreements may include provisions for reporting on the operation and effectiveness of all or part of the agreement.

¹⁸⁵ EPBC Act section 48(1)(c).

¹⁸⁶ EPBC Act section 48(1)(d). Summaries of compliance audits under the EPBC Act are published at: <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/compliance-2>.

¹⁸⁷ The Australian World Heritage management principles and the Australian Ramsar management principles provide that actions should be monitored and enforcement actions undertaken to ensure compliance with conditions (see clause 3.06), and EPBC Act sections 51(2)(b) and 52(2)(b) require the Minister to be satisfied the process or arrangement will promote these principles.

¹⁸⁸ EPBC Act section 48(1)(d). Standard conditions of approval under the EPBC Act require environmental management plans and environmental reports to be published on the Internet. Refer EPBC Act outcomes based conditions policy: <http://environment.gov.au/epbc/publications/outcomes-based-conditions-policy-guidance>

117. In relation to approved projects relating to matters of national environmental significance, states and territories have a robust range of enforcement and compliance options, including (but not limited to): routine monitoring, preliminary enquiries, investigation, enforcement action and engagement.¹⁸⁹ States and territories provide for civil penalties and criminal liability of executive officers of corporations.¹⁹⁰

Suspension or revocation

118. A bilateral agreement includes proportional measures to escalate and resolve non-compliance with the agreement, and disputes arising under the agreement.¹⁹¹

Facilitating evolution of law and policy under bilateral agreements

Considerations:

119. To ensure that the reforms continue to deliver good outcomes over time, the Commonwealth and states and territories will need to work cooperatively to continuously improve arrangements for the protection of matters of national environmental significance. This continual improvement will include reviewing and updating policies and approaches as new scientific information becomes available, as environmental conditions change and as we collectively increase knowledge and experience, or in response to system reviews and audits. The Commonwealth will engage with the states and territories on appropriate ways to ensure continuous improvement of accredited systems.
120. Bilateral agreements should also be responsive to changes in both Commonwealth, state and territory legislation, consistent with protecting the environment and promoting the conservation and ecologically sustainable use of natural resources. Cooperation and consultation should be the centrepiece of these arrangements. To facilitate legislative evolution under the bilateral agreements, it is proposed that parties undertake to notify and consult one another in the event of proposed amendment. As far as possible, administrative arrangements should ensure that the impact of legislative amendment on bilateral arrangements is dealt with in a cooperative manner consistent with agreed timeframes.
121. Regular reviews of national environmental standards will ensure they remain contemporary and reflect the latest information and available data.¹⁹² The Commonwealth will notify and seek the advice of states and territories on proposed new or varied standards.¹⁹³

¹⁸⁹ Civil and criminal penalties for significant impacts on matters of national environmental significance are in Part 3 of the EPBC Act. Part 17 of the EPBC Act deals generally with enforcement. Refer compliance policy at <http://environment.gov.au/about-us/publications/compliance-policy>

¹⁹⁰ EPBC Act, Part 18, Division 18 provides for liability of executive officers for corporations.

¹⁹¹ EPBC Act sections 57 - 64 set out the processes for suspending and ending the effect of a bilateral agreement.

¹⁹² EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 5A, Item 6 of the Bill (section 65G).

¹⁹³ EPBC Amendment (Standards and Assurance) Bill 2021 introduced to Parliament on 25 February 2021: see Schedule 1, Part 5A, Item 6 of the Bill (section 65F).

ATTACHMENT A – INTERNATIONAL OBLIGATIONS FOR LISTED THREATENED SPECIES AND ECOLOGICAL COMMUNITIES

Extracts from the Biodiversity Convention

‘Biodiversity Convention’ means the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992.¹⁹⁴

Preamble

The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources,

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.

Concerned that biological diversity is being significantly reduced by certain human activities.

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source.

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat,

Noting further that the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that *ex-situ* measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

¹⁹⁴ EPBC Act section 528.

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

...

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations.

Article 1

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 6

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I:

- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

Article 8

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;
- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
- (i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

- (k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;
- (l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and
- (m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

Article 14

1. Each Contracting Party, as far as possible and as appropriate, shall:
 - (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;
 - (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account ...

Article 18

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.
2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.
3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.
4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.
5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Extracts from the Apia Convention

'Apia Convention' means the *Convention on Conservation of Nature in the South Pacific*, done at Apia, Western Samoa, on 12 June 1976.¹⁹⁵

Preamble

The Contracting Parties, having in mind the Principles set out in the Declaration adopted by the United Nations Conference on the Human Environment at Stockholm in June 1972;

Convinced of the urgency for action inspired by these Principles, especially in relation to the maintenance of the capacity of the earth to produce essential renewable natural resources, the safeguarding of representative samples of natural ecosystems, and the safeguarding of the heritage of wildlife and its habitat;

Conscious of the importance of natural resources from a nutritional, scientific, educational, cultural and aesthetic point of view;

Conscious also of the dangers threatening these irreplaceable resources;

Recognizing the special importance in the South Pacific of indigenous customs and traditional cultural practices and the need to give due consideration to such matters;

Desirous of taking action for the conservation, utilization and development of these resources through careful planning and management for the benefit of present and future generations;

Article 2

1. Each Contracting Party shall, to the extent that it is itself involved, encourage the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystems occurring therein (particular attention being given to endangered species), as well as superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value. ...

Article 5

1. The Contracting Parties shall, in addition to the protection given to indigenous fauna and flora in protected areas, use their best endeavours to protect such fauna and flora (special attention being given to migratory species) so as to safeguard them from unwise exploitation and other threats that may lead to their extinction.

2. Each Contracting Party shall establish and maintain a list of species of its indigenous fauna and flora that are threatened with extinction. ...

3. Each Contracting Party shall protect as completely as possible as a matter of special urgency and importance the species included in the list it has established in accordance with the provisions of the last preceding paragraph. The hunting, killing, capture or collection of specimens (including eggs and shells) of such species shall be allowed only with the permission of the appropriate authority. Such permission shall be granted only under special circumstances, in order to further scientific purposes or when essential for the maintenance of

¹⁹⁵ EPBC Act section 528.

the equilibrium of the ecosystem or for the administration of the area in which the animal or plant is found.

Extracts from CITES

'CITES' means *the Convention on International Trade in Endangered Species of Wild Fauna and Flora* done at Washington on 3 March 1973.¹⁹⁶

Preamble

The Contracting States,

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

Convinced of the urgency of taking appropriate measures to this end;

Have agreed as follows:

Article 2

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

- (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of [CITES].

¹⁹⁶ EPBC Act section 528.

ATTACHMENT B – INTERNATIONAL OBLIGATIONS FOR LISTED MIGRATORY SPECIES

Extracts from the Bonn Convention

'Bonn Convention' means the *Convention on the Conservation of Migratory Species of Wild Animals* done at Bonn on 23 June 1979.¹⁹⁷

Preamble

The Contracting Parties,

Recognizing that wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of mankind;

Aware that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely;

Conscious of the ever-growing value of wild animals from environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic points of view;

Concerned particularly with those species of wild animals that migrate across or outside national jurisdictional boundaries;

Recognising that the States are and must be the protectors of the migratory species of wild animals that live within or pass through their national jurisdictional boundaries;

Convinced that conservation and effective management of migratory species of wild animals require the concerted action of all States within the national jurisdictional boundaries of which such species spend any part of their life cycle;

Recalling Recommendation 32 of the Action Plan adopted by the United Nations Conference on the Human Environment (Stockholm, 1972) and noted with satisfaction at the Twenty-seventh Session of the General Assembly of the United Nations,

Have agreed as follows:

Article 2

1. The Parties acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat.
2. The Parties acknowledge the need to take action to avoid any migratory species becoming endangered.
3. In particular, the Parties:
 - a) should promote, co-operate in and support research relating to migratory species;

¹⁹⁷ EPBC Act section 528.

- b) shall endeavour to provide immediate protection for migratory species included in Appendix I; and
- c) shall endeavour to conclude agreements covering the conservation and management of migratory species included in Appendix II.

Extracts from CAMBA

'CAMBA' means the *Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* done at Canberra on 20 October 1986.¹⁹⁸

Preamble

The Government of Australia and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties):

Considering that birds constitute an important element in the natural environment and are also important natural resources of great value in carrying on scientific, cultural, artistic, recreational and economic activities;

Recognising the existence of special international concern for the protection of migratory birds;

Noting the existence of bilateral and multilateral agreements for the protection of migratory birds;

Considering that many species of birds that are known to be migratory occur in Australia and in the People's Republic of China;

Desiring to co-operate in the protection of migratory birds and their environment;

Have reached the following agreement as a result of friendly discussions:

Article 3

...

3. Each Contracting Party shall encourage the conservation of migratory birds, especially those species in danger of extinction.

Article 4

Each Contracting Party shall endeavour, in accordance with its laws and regulations in force, to:

(a) establish sanctuaries and other facilities for the management and protection of migratory birds and also of their environment; and

(b) take appropriate measures to preserve and enhance the environment of migratory birds. In particular, each Contracting Party shall:

- (i) seek means to prevent damage to migratory birds and their environment, and
- (ii) endeavour to take such measures as may be necessary to restrict or prevent the importation and introduction of animals and plants which are hazardous to the preservation of migratory birds and their environment.

¹⁹⁸ EPBC Act section 528.

Extracts from JAMBA

'JAMBA' means the *Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their Environment* done at Tokyo on 6 February 1974.¹⁹⁹

Preamble

The Government of Australia and the Government of Japan,

Considering that birds constitute an important element in the natural environment and play an essential role in enriching the natural environment and that this role may be enhanced by proper management thereof,

Recognising the special international concern, as expressed, for example, at the United Nations Conference on the Human Environment, for the protection of migratory birds and birds in danger of extinction,

Noting the existence of bilateral and multilateral agreements for the protection of migratory birds and birds in danger of extinction,

Considering that many species of birds migrate between Australia and Japan and live seasonally in respective countries and that there are certain species of birds which are in danger of extinction and also that co-operation between the two Governments is essential for the conservation of these birds, and

Desiring to co-operate in taking measures for the management and protection of migratory birds and birds in danger of extinction and also for the management and protection of their environments,

Have agreed as follows:

Article 3

1. Each Government shall take special protective measures, as appropriate, for the preservation of species or subspecies of birds which are in danger of extinction. ...

Article 4

1. The two Governments shall exchange data and publications regarding research on migratory birds and birds in danger of extinction.

2. Each Government shall encourage the formulation of joint research programs on migratory birds and birds in danger of extinction.

3. Each Government shall encourage the conservation of migratory birds and birds in danger of extinction.

¹⁹⁹ EPBC Act section 528.

Article 5

Each Government shall endeavour to establish sanctuaries and other facilities for the management and protection of migratory birds and birds in danger of extinction and also of their environment.

Article 6

Each Government shall endeavour to take appropriate measures to preserve and enhance the environment of birds protected under the provisions of this Agreement. In particular, it shall:

- (a) seek means to prevent damage to such birds and their environment;
- (b) endeavour to take such measures as may be necessary to control the importation of animals and plants which it determines to be hazardous to the preservation of such birds; and
- (c) endeavour to take such measures as may be necessary to control the introduction of animals and plants which could disturb the ecosystems of unique island environments.

Extracts from ROKAMBA

'ROKAMBA' refers to the *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds* done at Canberra on 6 December 2006.

Preamble

The Government of the Republic of Korea and the Government of Australia (hereinafter referred to as 'the Parties'),

Considering that birds not only constitute an important element of the natural environment but also play an essential role in enriching the natural environment and that this role may be enhanced by proper management thereof,

Recognizing that many species of birds migrate between and seasonally live in both countries and that there is international concern for the protection of migratory birds;

Noting the existence of bilateral and multilateral agreements for the protection of migratory birds and their habitats, and the cooperative efforts being made to conserve migratory waterbirds in the East Asian-Australasian Flyway,

Convinced that cooperation between the Parties is essential for the conservation of these birds, and

Desiring to cooperate in taking measures for the management and protection of migratory birds and their habitat and the prevention of the extinction of certain birds,

Have agreed as follows:

Article 3

1. The Parties shall encourage the exchange of data and publications regarding research on migratory birds.
2. Each Party shall encourage the formulation of joint research programs on migratory birds.
3. Each Party shall encourage the conservation of migratory birds. ...

Article 4

Each Party shall endeavour to manage and conserve the habitat of migratory birds through activities such as the designation of conservation areas in its territory.

Article 5

Each Party shall endeavour to take the appropriate measures to conserve and improve the environment of birds protected under Article 1 of this Agreement. In particular, it shall:

- (a) seek means to prevent damage to such birds and their environment;
- (b) endeavour to take measures to control the impact of invasive animals and plants on the conservation of such birds and their environment; and

(c) endeavour to participate in regional cooperative activities for the conservation of migratory birds in the Asia-Pacific region.

ATTACHMENT C – INTERNATIONAL OBLIGATIONS FOR RAMSAR WETLANDS

Extracts from the Ramsar Convention

'Ramsar Convention' means the *Convention on Wetlands of International Importance especially as Waterfowl Habitat* done at Ramsar, Iran, on 2 February 1974.²⁰⁰ The following are selected extracts of key Articles from the Convention.

Preamble

The Contracting Parties,

Recognizing the interdependence of Man and his environment;

Considering the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;

Being convinced that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;

Desiring to stem the progressive encroachment on and loss of wetlands now and in the future;

Recognizing that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;

Being confident that the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with coordinated international action;

Have agreed as follows:

Article 1

1. For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

2. For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands.

Article 2

1. Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as 'the List' which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.

²⁰⁰ EPBC Act section 528.

2. Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included.

...

5. Any Contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List and shall, at the earliest possible time, inform the organization or government responsible for the continuing bureau duties specified in Article 8 of any such changes.

6. Each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands within its territory.

Article 3

1. The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

2. Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.

Article 4

1. Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.

2. Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

3. The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.

4. The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.

5. The Contracting Parties shall promote the training of personnel competent in the fields of wetland research, management and wardening.

ATTACHMENT D – AUSTRALIAN RAMSAR MANAGEMENT PRINCIPLES

Schedule 6 to the EPBC Regulations

1 General principles

1.01 The primary purpose of management of a declared Ramsar wetland must be, in accordance with the Ramsar Convention:

- (a) to describe and maintain the ecological character of the wetland; and
- (b) to formulate and implement planning that promotes:
 - (i) conservation of the wetland; and
 - (ii) wise and sustainable use of the wetland for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.

1.02 Wetland management should provide for public consultation on decisions and actions that may have a significant impact on the wetland.

1.03 Wetland management should make special provision, if appropriate, for the involvement of people who:

- (a) have a particular interest in the wetland; and
- (b) may be affected by the management of the wetland.

1.04 Wetland management should provide for continuing community and technical input.

2 Management planning

2.01 At least 1 management plan should be prepared for each declared Ramsar wetland.

2.02 A management plan for a declared Ramsar wetland should:

- (a) describe its ecological character; and
- (b) state the characteristics that make it a wetland of international importance under the Ramsar Convention; and
- (c) state what must be done to maintain its ecological character; and
- (d) promote its conservation and sustainable use for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem; and
- (e) state mechanisms to deal with the impacts of actions that individually or cumulatively endanger its ecological character, including risks arising from:
 - (i) physical loss, modification or encroachment on the wetland; or
 - (ii) loss of biodiversity; or
 - (iii) pollution and nutrient input; or

- (iv) changes to water regimes; or
- (v) utilisation of resources; or
- (vi) introduction of invasive species; and
- (f) state whether the wetland needs restoration or rehabilitation; and
- (g) if restoration or rehabilitation is needed — explain how the plan provides for restoration or rehabilitation; and
- (h) provide for continuing monitoring and reporting on the state of its ecological character; and
- (i) be based on an integrated catchment management approach; and
- (j) include adequate processes for public consultation on the elements of the plan; and
- (k) be reviewed at intervals of not more than 7 years.

3 Environmental impact assessment and approval

3.01 This principle applies to the assessment of an action that is likely to have a significant impact on the ecological character of a Ramsar wetland (whether the action is to occur inside the wetland or not).

3.02 Before the action is taken, the likely environmental impact of the action on the wetland's ecological character should be assessed under a statutory environmental impact assessment and approval process.

3.03 The assessment process should:

- (a) identify any part of the ecological character of the wetland that is likely to be affected by the action; and
- (b) examine how the ecological character of the wetland might be affected; and
- (c) provide adequate opportunity for public consultation.

3.04 An action should not be approved if it would be inconsistent with:

- (a) maintaining the ecological character of the wetland; or
- (b) providing for the conservation and sustainable use of the wetland.

3.05 Approval of the action should be subject to conditions, if necessary, to ensure that the ecological character of the wetland is maintained.

3.06 The action should be monitored by the authority responsible for giving the approval (or another appropriate authority) and, if necessary, enforcement action should be taken to ensure compliance with the conditions.

ATTACHMENT E – NATIONAL HERITAGE MANAGEMENT PRINCIPLES

Schedule 5B to the EPBC Regulations

- 1 The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, their National Heritage values.
- 2 The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their National Heritage values.
- 3 The management of National Heritage places should respect all heritage values of the place and seek to integrate, where appropriate, any Commonwealth, State, Territory and local government responsibilities for those places.
- 4 The management of National Heritage places should ensure that their use and presentation is consistent with the conservation of their National Heritage values.
- 5 The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:
 - (a) have a particular interest in, or association with, the place; and
 - (b) may be affected by the management of the place.
- 6 Indigenous people are the primary source of information on the value of their heritage and the active participation of Indigenous peoples in identification, assessment and management is integral to the effective protection of indigenous heritage values.
- 7 The management of National Heritage places should provide for regular monitoring, review and reporting on the conservation of National Heritage values.

ATTACHMENT F – ACCREDITATION OF MANAGEMENT PLANS FOR WORLD HERITAGE PROPERTIES AND NATIONAL HERITAGE PLACES

Extract from Part 2B of the EPBC Regulations

Criteria for a management plan

...

- (3) Development of the management plan must have included consultation with:
- (a) the Australian community generally; and
 - (b) any particular groups having a special interest in the property or place, or likely to be especially affected by a management plan for the property or place.
- (4) The public consultation mentioned in subregulation (3) must have included the release of a draft management plan for public comment and the allowing of at least 20 business days for the receipt of comment by the State or Territory organisation that is responsible for developing the plan.

Note: Subsections 46 (2), 51 (2) and 51A (2) of the Act also set out requirements about accreditation of management plans.

Content of the management plan

- (5) A management plan for a declared or proposed World Heritage property or a National Heritage place:
- (a) must outline the process of public consultation that was undertaken in the development of the plan; and
 - (b) must state the law under which the plan is in force; and
 - (c) must include a description of the property or place, including its boundary and the relevant World Heritage or National Heritage values; and
 - (d) must state what must be done to ensure that the relevant World Heritage or National Heritage values are identified, conserved, protected, presented and transmitted to future generations and, if appropriate, rehabilitated; and
 - (e) must set out the means by which risk management of the property or place will be addressed, including:
 - (i) identifying the risks to the relevant World Heritage or National Heritage values; and
 - (ii) providing an analysis of the potential effect of each identified risk on the relevant World Heritage or National Heritage values, including an estimation of the nature, extent and likelihood of the risk; and
 - (iii) setting out risk management strategies to protect and conserve the relevant World Heritage or National Heritage values; and

- (f) must provide that adequate assessment of the impacts, on the relevant World Heritage or National Heritage values, of any proposed actions provided for under the plan, or that may arise during the life of the plan, has been, or will be, undertaken by means specified in the plan; and
- (g) must set out the means, any legislation other than the plan, and the processes, that:
 - (i) were used in assessing the impacts of actions that are provided for under the plan; and
 - (ii) are to be used in assessing the impacts of actions that may arise during the life of the plan; and
- (h) must require that the impacts of any actions likely to have a significant impact on the relevant World Heritage or National Heritage values have been, or will be, assessed by means that provide environmental assessment processes that meet the recommendations of regulations 3.03 and 3.04 and Schedule 1; and
- (i) must provide that actions in relation to the property or place may be approved only in accordance with the plan; and
- (j) must require a decision-maker to take account of the precautionary principle in making a decision in relation to the property or place; and
- (k) must set out the means, and any legislation other than the plan, that:
 - (i) enable the setting of enforceable conditions to ensure that the relevant World Heritage or National Heritage values are conserved, protected, presented and transmitted to future generations and, if appropriate, rehabilitated; and
 - (ii) provide for any subsequent monitoring, auditing and enforcement of approvals and any conditions attached to an approval; and
- (l) must set out means by which the plan will seek to prevent, or minimise the impacts of, any actions likely to degrade the relevant World Heritage or National Heritage values, including actions leading to cumulative degradation; and
- (m) must state that actions that will have unacceptable or unsustainable impacts (in particular, actions that will have a significant impact on the relevant World Heritage or National Heritage values) are inconsistent with the plan and cannot be approved; and
- (n) must set out means for the plan to be enforced, including, in appropriate circumstances, the imposition of penalties upon a person taking an action that is inconsistent with the plan; and
- (o) must ensure that management actions for values that are not the relevant World Heritage or National Heritage values are consistent with the management of the relevant World Heritage or National Heritage values; and

- (p) must promote the integration of Commonwealth, State or Territory, and local government responsibilities for the property or place; and
- (q) must provide for continuing monitoring and reporting on the state of the relevant World Heritage or National Heritage values; and
- (r) must provide that the plan is to be reviewed at intervals of not more than 5 years.

Criterion for law of State or Territory

(6) For paragraph 46 (3) (a) of the Act, the criterion that the law of the State or Territory under which the management plan is in force (or is to be in force) must be capable of providing protection for the relevant World Heritage or National Heritage values of the property or place is prescribed in relation to that law of the State or Territory.

ATTACHMENT G – INTERNATIONAL OBLIGATIONS FOR WORLD HERITAGE PROPERTIES

Extracts from the World Heritage Convention

‘World Heritage Convention’ means the *Convention for the Protection of the World Cultural and Natural Heritage* done at Paris on 23 November 1972.²⁰¹ The following are selected extracts of key Articles from the Convention.

Preamble

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase, and diffuse knowledge by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

²⁰¹ EPBC Act section 528.

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

Article 4

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

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage ... is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. ...

Article 11

...

4. The [World Heritage] Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of 'list of World Heritage in Danger', a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

Article 29

1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee. ...

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

ATTACHMENT H – AUSTRALIAN WORLD HERITAGE MANAGEMENT PRINCIPLES

Schedule 5 to the EPBC Regulations

1 General principles

1.01 The primary purpose of management of natural heritage and cultural heritage of a declared World Heritage property must be, in accordance with Australia's obligations under the World Heritage Convention, to identify, protect, conserve, present, transmit to future generations and, if appropriate, rehabilitate the World Heritage values of the property.

1.02 The management should provide for public consultation on decisions and actions that may have a significant impact on the property.

1.03 The management should make special provision, if appropriate, for the involvement in managing the property of people who:

- (a) have a particular interest in the property; and
- (b) may be affected by the management of the property.

1.04 The management should provide for continuing community and technical input in managing the property.

2 Management planning

2.01 At least 1 management plan should be prepared for each declared World Heritage property.

2.02 A management plan for a declared World Heritage property should:

- (a) state the World Heritage values of the property for which it is prepared; and
- (b) include adequate processes for public consultation on proposed elements of the plan; and
- (c) state what must be done to ensure that the World Heritage values of the property are identified, conserved, protected, presented, transmitted to future generations and, if appropriate, rehabilitated; and
- (d) state mechanisms to deal with the impacts of actions that individually or cumulatively degrade, or threaten to degrade, the World Heritage values of the property; and
- (e) provide that management actions for values, that are not World Heritage values, are consistent with the management of the World Heritage values of the property; and
- (f) promote the integration of Commonwealth, State or Territory and local government responsibilities for the property; and
- (g) provide for continuing monitoring and reporting on the state of the World Heritage values of the property; and
- (h) be reviewed at intervals of not more than 7 years.

3 Environmental impact assessment and approval

3.01 This principle applies to the assessment of an action that is likely to have a significant impact on the World Heritage values of a property (whether the action is to occur inside the property or not).

3.02 Before the action is taken, the likely impact of the action on the World Heritage values of the property should be assessed under a statutory environmental impact assessment and approval process.

3.03 The assessment process should:

- (a) identify the World Heritage values of the property that are likely to be affected by the action; and
- (b) examine how the World Heritage values of the property might be affected; and
- (c) provide for adequate opportunity for public consultation.

3.04 An action should not be approved if it would be inconsistent with the protection, conservation, presentation or transmission to future generations of the World Heritage values of the property.

3.05 Approval of the action should be subject to conditions that are necessary to ensure protection, conservation, presentation or transmission to future generations of the World Heritage values of the property.

3.06 The action should be monitored by the authority responsible for giving the approval (or another appropriate authority) and, if necessary, enforcement action should be taken to ensure compliance with the conditions of the approval.

ATTACHMENT I – EXTRACT FROM THE INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT 1992

Section 3 – Principles of environmental policy

3.1 The parties agree that the development and implementation of environmental policy and programs by all levels of Government should be guided by the following considerations and principles.

3.2 The parties consider that the adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development, will benefit both the Australian people and environment, and the international community and environment. This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations.

3.3 The parties consider that strong, growing and diversified economies (committed to the principles of ecologically sustainable development) can enhance the capacity for environmental protection. In order to achieve sustainable economic development, there is a need for a country's international competitiveness to be maintained and enhanced in an environmentally sound manner.

3.4 Accordingly, the parties agree that environmental considerations will be integrated into Government decision-making processes at all levels by, among other things:

- i. ensuring that environmental issues associated with a proposed project, program or policy will be taken into consideration in the decision making process;
- ii. ensuring that there is a proper examination of matters which significantly affect the environment; and
- iii. ensuring that measures adopted should be cost-effective and not be disproportionate to the significance of the environmental problems being addressed.

3.5 The parties further agree that, in order to promote the above approach, the principles set out below should inform policy making and program implementation.

3.5.1 Precautionary principle -

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
- ii. an assessment of the risk-weighted consequences of various options.

3.5.2 Intergenerational equity -

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

3.5.3 Conservation of biological diversity and ecological integrity -

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

3.5.4 Improved valuation, pricing and incentive mechanisms -

Environmental factors should be included in the valuation of assets and services.

Polluter pays i.e. those who generate pollution and waste should bear the cost of containment, avoidance, or abatement.

The users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes

Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.