

Draft Framework of Standards

for

**Accreditation of
Environmental Approvals**

under the

***Environment Protection and Biodiversity
Conservation Act 1999***

July 2012

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Preface

In April 2012 the Council of Australian Governments (COAG) agreed to reform the administration of national environment regulation in order to reduce duplication and double-handling while maintaining high environmental standards.

To achieve this, COAG agreed to develop bilateral arrangements to accredit states and territories (states) to assess and approve actions through statutory bilateral agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). To ensure the maintenance of strong environment outcomes, COAG agreed that standards should be developed to inform the development of accreditation arrangements between the Commonwealth and each state.

The Commonwealth has put forward a draft *Framework of Standards for Accreditation*. **The draft standards are a Commonwealth document and form the basis for the Australian Government's approach to bilateral negotiations.** They set out both:

1. Standards for accreditation – which reflect the specific accreditation requirements of the EPBC Act, and requirements of Commonwealth law and policy that are essential for the Commonwealth to be satisfied that high environment standards will be maintained; and
2. Commonwealth considerations – which provide additional guidance to jurisdictions on areas that the Commonwealth will take into account when determining whether the standards have been met.

1. Introduction

1. This document proposes standards for accreditation of State and Territory regimes to undertake environment approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
2. The circulation of this draft *Framework of Standards for Accreditation* (the Framework) is the second milestone in the delivery of the Council of Australian Governments' (COAG) environment regulation reform agenda. It builds on the *Statement of Environmental and Assurance Outcomes*, the first milestone paper for this reform, which the Commonwealth provided to States and Territories on 8 June 2012. The two documents should be read together.
3. The implementation of a comprehensive system for the accreditation of environmental approvals is a collaborative endeavour involving the Commonwealth working in close partnership with State and Territory governments. This draft framework has been prepared to provide a basis for further discussions with the States and Territories of the requirements for a robust system that maintains Australia's reputation for high environmental standards and efficient regulation.

Purpose of this Framework

4. The Framework of Standards is designed to support the implementation of COAG's environment regulation reform agenda by facilitating a detailed exchange of information between the Commonwealth, States and Territories about:
 - the requirements that must be satisfied in order for the Commonwealth to accredit State and Territory systems through bilateral agreements under the EPBC Act; and
 - how each State and Territory system could address those requirements.
5. The Framework is intended to support risk- and outcome-based regulation. Accordingly, the standards for accreditation are clearly specified. However, it is recognised that States and Territories should have flexibility in proposing how they would achieve the standards within the requirements of the EPBC Act.
6. This document sets out:
 1. contextual information about the EPBC Act and the requirements for accrediting approval systems under bilateral agreements;
 2. an explanation of the standards; and
 3. standards for accreditation for each of the environment and system outcomes identified in the *Statement of Environmental and Assurance Outcomes*.

2. Context

Overview of the EPBC Act

7. The EPBC Act is the Commonwealth Government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, heritage places and Commonwealth marine areas - defined

in the EPBC Act as matters of national environmental significance.¹ 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,² and is the statutory mechanism to ensure that Australia meets its obligations under key international environmental conventions.

The objects of the EPBC Act are to:³

- 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.

8. 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.⁴

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.

A risk-based threshold for environmental regulation

9. The EPBC Act adopts a risk-based approach in setting a ‘significant impact’ threshold for the regulation of environmental approvals. This means that the Act requires the referral of proposed actions that are likely to have a significant impact on a matter of national environmental significance.⁵ It follows that State and Territory assessment and approval processes accredited under bilateral agreements need only cover actions that cross this threshold.

Accreditation of State and Territory environment approvals

10. The EPBC Act provides various mechanisms to minimise duplication by accrediting State and Territory environmental assessment and approval systems.⁶ The most comprehensive of these mechanisms are bilateral agreements. In effect, bilateral agreements allow the Commonwealth, subject to certain requirements, to delegate to the States and Territories the responsibility for assessing and approving proposed developments under the EPBC Act.
11. There are two types of bilateral agreement:
- an *assessment bilateral agreement* may declare that actions assessed in a specified manner by a State or Territory need not be assessed under the EPBC Act, thus minimising duplication between Commonwealth and State or Territory assessments; and
 - an *approval bilateral agreement* may declare that actions taken under accredited State or Territory management arrangements or authorisation processes do not need further Commonwealth approval under the EPBC Act.
12. 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.⁷ While we can draw lessons from existing assessment bilateral agreements, the reform agreed by COAG is breaking new ground in seeking the accreditation of State and Territory regimes to undertake approvals. The accreditation of approval regimes would, necessarily, incorporate assessment processes which relate to these approvals.
13. Therefore, consistent with COAG’s decision, the standards in this document are focussed on the development of bilateral agreements that accredit State and Territory environmental approval and related assessment arrangements.

Prerequisites for agreeing bilateral agreements

14. The power to make approval and assessment bilateral agreements is in Part 5 of the EPBC Act. This part includes requirements that:
- for assessment bilateral agreements – the manner of the assessment process must be specified and may include:
 - assessment by any person under a law of the State; or
 - assessment by any person under an agreement or instrument made under a law of the State; or
 - assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement;⁸ and

- for approval bilateral agreements – an accredited authorisation process or management arrangement (defined under section 46 of the EPBC Act) must be set out in, or in force under, a law of the State or Territory, and otherwise meet the criteria set out in the EPBC Act and the Regulations.

Thresholds for bilateral agreements and accreditation

In general terms, the Commonwealth Minister for the Environment must be satisfied that a bilateral agreement and State or Territory processes or arrangements:

- a) accord with the objects of the EPBC Act, which incorporate the principles of ecologically sustainable development, including the precautionary principle;⁹
- b) are not inconsistent with Australia's obligations under each of the relevant international agreements;¹⁰
- c) 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;¹¹
- d) promote the survival and/or enhance the conservation status of any relevant threatened or migratory species;¹²

and that individual approval decisions under accredited arrangements:

- e) will be the subject of adequate assessment of the impacts that actions are likely to have on matters of national environmental significance;
- f) are not inconsistent with any relevant threat abatement plans or recovery plans; and
- g) will not result in the approval of an action that would have unacceptable or unsustainable impacts on any of the matters protected by the EPBC Act.¹³

15. Where appropriate, the Commonwealth is open to options for progressive accreditation of State and Territory systems. In this case, the Minister could accredit those aspects of State and Territory systems that meet the required standards and bilateral agreements could provide a framework and timeline for moving to full accreditation.

Overarching vision

16. Consistent with COAG's decision, the overarching vision for these reforms is:

To strengthen intergovernmental cooperation and minimise unnecessary costs to business through bilateral agreements under the EPBC Act which achieve high environmental outcomes.

17. Efficient and robust systems for environmental assessment and approval, and a commitment to strong intergovernmental co-operation for areas where there is shared responsibility, can contribute to the reduction of business costs and support the achievement of high environmental standards.¹⁴ Taken together, these outcomes aim to improve and enhance productivity.

3. Approach to standards for accreditation

18. For each environmental and systems outcome identified in the *Statement of Environmental and Assurance Outcomes*, this Framework sets out standards for accreditation. The Framework also describes considerations that will be taken into account by the Commonwealth Environment Minister in determining whether the legal requirements for accreditation can be met.
19. The table below shows the approach in the document to setting out the standards and considerations.

Outcome: the desired environmental or system outcome, described in the <i>Statement of Environmental and Assurance Outcomes</i>
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<i>Standards:</i>

The standards consist of:

- a) specific accreditation requirements of the EPBC Act; and
- b) requirements of Commonwealth law and policy that are essential for the Commonwealth Environment Minister to be satisfied that high environmental standards will be maintained.¹⁵

As noted above, it is recognised that States and Territories should have flexibility in proposing how they would achieve the standards within the requirements of the EPBC Act.

<i>Considerations for accreditation:</i>

This section lists considerations that the Commonwealth Environment Minister will take into account in deciding whether he or she can be satisfied that the standards set out above will be met. These considerations are those that currently guide decisions made by the Commonwealth and are derived from:

- a) key provisions of the EPBC Act;
- b) Commonwealth policy or practice under the EPBC Act; and
- c) key administrative law principles.

Comments, elaboration or proposals for discussion from the Commonwealth are shown in italicised text below the relevant consideration.

A proposed approach to achieving assurance and flexibility

20. The standards proposed in this Framework are derived from key legal requirements for accreditation and other requirements imposed on the Commonwealth under the EPBC Act.
21. Each jurisdiction may propose for accreditation a set of arrangements that combine legislative provisions with plans, policies and programs. 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 conservation outcomes for matters of national environmental significance than a regulatory approach that involves only the accreditation of a particular legislative system or process.

22. 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, policies and programs 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 Commonwealth Minister under the EPBC Act.¹⁶ 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 undertake a strategic assessment under Part 10 of the EPBC Act, or to align investment in recovery actions for maximum effect. A table identifying relevant tools available under the EPBC Act, to support this comprehensive and flexible approach, is at **Attachment A**.

4. Standards for the environment and systems

23. This section sets out the environment and systems standards to be met to achieve the Commonwealth's overarching vision, and related outcomes, identified by the *Statement of Environmental and Assurance Outcomes* for both the environment, systems and assurance.
24. The overarching outcome and measure of success for the environment from this reform is that:¹⁷
- Australia's high environmental standards are maintained and that:*
1. *Australia will comply fully with all its international environmental obligations;*
 2. *matters of national environmental significance are protected as required under the EPBC Act;*
 3. *there will be high quality assessment of the impacts of proposed actions on matters of national environmental significance; and*
 4. *authorised actions do not have unacceptable or unsustainable impacts on matters of national environmental significance.*
25. The EPBC Act protects eight matters of national environmental significance. These 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 and the Great Barrier Reef Marine Park.¹⁸

Environmental Standards

26. The standards set out immediately below relate to all eight matters of national environmental significance. Subsequent standards relate to each of these eight matters of national environmental significance individually. The standards should be read together.

Environmental Outcomes for all Matters of National Environmental Significance

Outcome: *Matters of National Environmental Significance are protected and conserved.*

Standards:

29. Actions approved under the authorisation process will not have unacceptable or unsustainable impacts on relevant ‘matters protected’¹⁹ covered by the agreement.²⁰ The matters protected are, in general, the values of listed places (eg the National Heritage values of a National Heritage Place); a species or ecological community; or in respect of nuclear matters and Commonwealth marine areas, the environment itself.

Examples of proposals that would have unacceptable or unsustainable impacts on a matter of national environmental significance and could not be approved would include,²¹ 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.*

30. The State or Territory must apply the ‘avoid, mitigate, offset’ hierarchy of principles for guiding the assessment and approval of actions, to ensure that actions approved will not have unacceptable impacts on protected matters.²²

31. In relation to coal seam gas and large coal mining developments, decision-makers will seek and take into account advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Developments, in respect to authorising actions that relate to matters of national environmental significance.²³

Considerations for accreditation:

32. The ‘avoid, mitigate, offset’ hierarchy of principles involves, where an action is likely to have a significant impact on a matter protected:

- 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;

- 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 must achieve long-term environmental outcomes for matters protected under the EPBC Act and be consistent with either the EPBC Act Environmental Offsets Policy,²⁴ or another policy accredited by the Minister as achieving the objects of the EPBC Act to an equivalent or better level.
33. The requirement to 'avoid, mitigate, offset' can be met, in respect of each matter of national environmental significance but at a 'whole of matter' level, where the Minister accredits any combination of laws, plans, policies and programs as satisfying the Minister that no unacceptable or unsustainable impact will be approved. (See the example under Section 3 – A proposed approach to achieving assurance and flexibility.)

Listed threatened species and ecological communities

Outcome: *The survival and conservation status of listed species and ecological communities is promoted and enhanced, including through the conservation of habitat critical to the survival of a species or community²⁵ and other measures contained in any recovery plans, threat abatement plans or conservation advices.²⁶*

Standards:

34. A bilateral agreement relating to a threatened species or ecological community listed under the EPBC Act may be entered into only if:²⁷
- (a) the provision is not inconsistent with Australia's obligations under:²⁸
 - i. the Convention on Biological Diversity; or
 - ii. the Apia Convention; or
 - iii. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and
 - (b) the agreement will promote and/or enhance the conservation status of each relevant species or community listed under the EPBC Act;
 - (c) the provision is not inconsistent with any recovery plan²⁹ for any relevant species or community listed under the EPBC Act or a threat abatement plan³⁰ under the Act; and
 - (d) regard is had to any approved conservation advice for the relevant species or community listed under the EPBC Act;³¹ and
 - (e) the provision meets the requirements prescribed by the regulations.³²

Considerations for accreditation:

35. The conservation status of listed threatened species and ecological communities is promoted and/or enhanced through a combination of laws, plans, policies and programs.³³

*In the Commonwealth's view, the draft proposal under development by the COAG Working Group on Environmental Regulation Reform to align threatened species listings would assist this standard to be met in an effective way. The details of the proposal (in its current form) are set out at **Attachment C**.*

Listed migratory species

Outcome: *The survival and conservation status of migratory species and their critical habitat is promoted and enhanced, consistent with Australia's international obligations.*³⁴

Standards:

36. A bilateral agreement relating to a listed migratory species may be entered into only if:³⁵

(a) it is not inconsistent with the Commonwealth's obligations under whichever of the following is relevant for the species:³⁶

- i. the Bonn Convention;
- ii. China Australia Migratory Birds Agreement (CAMBA);
- iii. Japan Australia Migratory Birds Agreement (JAMBA);
- iv. Republic of Korea Australia Migratory Birds Agreement (ROKAMBA);³⁷
- v. an international agreement approved under subsection 209(4) of the EPBC Act; and

(b) the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates.

Considerations for accreditation:

37. The conservation status of listed migratory species is promoted and/or enhanced through a combination of laws, plans, policies and programs.³⁸

Endorsed policies and plans might identify and protect important habitat for migratory species such as sea grass beds used by dugongs or feeding or breeding habitat for migratory birds.

Wetlands of international importance

Outcome: *The ecological character of each Ramsar wetland is maintained, and conservation and wise³⁹ and sustainable use of the wetland is promoted for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem. This is to be achieved through the implementation of ecosystem approaches, within the context of sustainable development.*⁴⁰

Standards:

38. A bilateral agreement containing a provision relating to a declared Ramsar wetland may be entered into only if:⁴¹

- (a) it is not inconsistent with Australia's obligations under the Ramsar Convention;⁴² and
- (b) the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles set out at **Attachment F**.⁴³

Considerations for accreditation:

39. The ecological character of Ramsar Wetlands is maintained through a combination of laws, plans, policies and programs.⁴⁴

National Guidelines for Ramsar Wetlands are currently under joint development by the Commonwealth and States and Territories.⁴⁵ Guidelines have been published on describing the ecological character of Ramsar sites,⁴⁶ notifying change in ecological character⁴⁷ and mapping wetlands.⁴⁸ Additional guidelines may be published in the series. These guidelines are designed to facilitate improved management of Ramsar sites and maintenance of their ecological character, in line with commitments under the Ramsar Convention and responsibilities under the Environment Protection and Biodiversity Conservation Act 1999.

National Heritage

Outcome: *The outstanding value to the nation of National Heritage properties is identified, protected, conserved, presented and transmitted to future generations of Australians.*⁴⁹

Standards:

40. A bilateral agreement containing a provision relating to a National Heritage place may be entered into only if:⁵⁰
- (a) the agreement will promote the management of the place in accordance with the National Heritage management principles set out at **Attachment G**;⁵¹ and
 - (b) where the bilateral agreement provides for the accreditation of a management plan for a declared National Heritage place, the bilateral meets the requirements prescribed in Part 2B of the EPBC Regulations, set out at **Attachment H**.⁵²
41. The bilateral agreement must provide for the accreditation of a management plan or suitable alternative (such as a strategic assessment) for the National Heritage Place that sets out the process for authorising future actions relating to the place.⁵³

Considerations for accreditation:

42. The National Heritage values of National Heritage places are protected and conserved through a combination of laws, plans, policies and programs.⁵⁴

World Heritage properties

Outcomes: *The outstanding universal value of World Heritage properties must be identified, protected, conserved, presented and transmitted to future generations.*⁵⁵

Australia's World Heritage properties must be managed to ensure that Australia is not subject to international sanction, none of the properties are placed on the 'in danger' list and none are delisted.⁵⁶

Standards:

43. A bilateral agreement containing a provision relating to a declared World Heritage property may be entered into only if:⁵⁷
- (a) it is not inconsistent with Australia's obligations under the World Heritage Convention;⁵⁸ and

(b) the agreement will promote the management of the property in accordance with the Australian World Heritage management principles set out at **Attachment J**,⁵⁹ and

(c) where the bilateral provides for the accreditation of a management plan for a declared World Heritage property, the bilateral meets the requirements of Part 2B of the EPBC Regulations⁶⁰ set out at **Attachment H**.

44. The State or Territory acts in accordance with the *Operational Guidelines for the Implementation of the World Heritage Convention*, 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.⁶¹
45. The bilateral agreement must provide for the accreditation of a management plan or suitable alternative (such as a strategic assessment) for the World Heritage property that sets out the process for authorising future actions relating to the property.⁶²

Considerations for accreditation:

46. The outstanding universal values of World Heritage properties are protected and conserved through a combination of laws, plans, policies and programs.⁶³

Protection of the environment from nuclear actions

Outcome: Nuclear actions (eg uranium mining and radioactive waste management) are undertaken in a manner that protects the community and the environment.⁶⁴

Standards:

47. A bilateral agreement, or accredited management arrangement or authorisation process, must not contain a provision that:⁶⁵
- (a) relates to a nuclear action; 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 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.
48. A bilateral agreement must 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.⁶⁶

Considerations for accreditation:

49. The community and the environment⁶⁷ are protected from impacts of nuclear actions through a combination of laws, plans, policies and programs.⁶⁸

50. The Commonwealth anticipates bilateral agreements that provide for the assessment of uranium mining rather than approvals for this activity.

Commonwealth marine environment

Outcome: *The ecosystem functioning and integrity of Commonwealth marine waters are maintained or enhanced in full conformity with relevant marine bioregional plans.*⁶⁹

Standards:

51. Approval decisions for proposed actions affecting the Commonwealth marine environment must not contravene any management plans under the EPBC Act for relevant marine reserves.⁷⁰
52. Approval decisions for proposed actions affecting the Commonwealth marine environment conform with any relevant bioregional plans made under the EPBC Act.⁷¹

Requirements for threatened and migratory species that are also marine species are addressed in outcomes 2.4 and 2.5. Migratory species are often one of the key issues for assessment in the marine environment, eg whales and other cetaceans.

Considerations for accreditation:

53. The Commonwealth marine environment is maintained or enhanced through a combination of laws, plans, policies and programs.⁷²

In this respect, the Commonwealth anticipates that a bilateral agreement will only relate to actions within State or Territory jurisdiction which may have a significant impact on the Commonwealth marine environment, for example, ocean outfall from a major coastal industrial facility.

Great Barrier Reef Marine Park

54. The Great Barrier Reef Marine Park has a special status, as it is the substantial part of a World Heritage area and a separate matter of national environmental significance in its own right. The Marine Park contains both Commonwealth and State waters. The Commonwealth and Queensland governments are working together to undertake a comprehensive strategic assessment of the Great Barrier Reef World Heritage Area and the adjacent coastal zone.
55. The Commonwealth proposes that the strategic assessment continue to its conclusion and that the bilateral agreement address other matters in ways that are complementary to the strategic assessment. Information about the strategic assessment is at:
<http://environment.gov.au/epbc/notices/assessments/great-barrier-reef.html>.

Outcomes: *The outstanding universal value of the Great Barrier Reef Marine Park, as a World Heritage property, must be identified, protected, conserved, presented and transmitted to future generations.*⁷³

The environmental, biodiversity and heritage values of the Great Barrier Reef Marine Park are protected and conserved for the long term, consistent with the objects of the Great Barrier Reef Marine Park Act 1975.⁷⁴

Standards:

56. Approval decisions for proposed actions outside the Great Barrier Reef Marine Park likely to affect the environment in the Marine Park must not contravene any zoning or other plans under the *Great Barrier Reef Marine Park Act 1975*.

Standards applicable to the Great Barrier Reef Marine Park will be developed and met through the strategic assessment currently in progress relating to the Marine Park and the adjacent Queensland coast. The Marine Park itself is managed by the Great Barrier Reef Marine Park Authority.

Requirements for the Commonwealth marine area are addressed under outcome 2.7. Requirements for World Heritage and National Heritage are addressed under outcomes 2.1 and 2.2 respectively. These requirements will almost always be also relevant to actions relating to the Great Barrier Reef Marine Park.

Considerations for accreditation:

See above – standards relating to the Marine Park will be developed and met through a strategic assessment.

System Standards

57. The overarching system outcome from this reform is:

*The community has confidence that systems will deliver certainty, efficiency, transparency, appropriate opportunities for public engagement and legally robust decisions.*⁷⁵

58. The section below sets out outcomes and related standards that go towards delivering overarching system outcomes.

Identifying Matters of National Environmental Significance

Outcome: *Deliver certainty and efficiency by systematically identifying actions that are likely to have a significant impact on a matter of national environmental significance.*

Standards:

59. The accredited process or arrangement for identifying matters of national environmental significance must be set out in, or in force under, a law of the State or Territory.⁷⁶

60. There must be an auditable system to identify whether proposed actions are likely to have a significant impact on a matter of national environmental significance, including:

- (a) on each species or ecological community;

- (b) on each migratory species;
- (c) on each National Heritage place;
- (d) on each World Heritage property;
- (e) on each Ramsar wetland;
- (f) on the environment (for nuclear actions or actions in, on impacting on, the Commonwealth marine environment; and
- (g) on the Great Barrier Reef Marine Park.⁷⁷

61. There has been or will be adequate assessment of the impacts (the EPBC Act defines impact broadly to include direct, indirect and facilitated impacts⁷⁸) on matters of national environmental significance covered by the agreement.⁷⁹
62. In relation to World Heritage properties, an assessment process should identify the outstanding universal values of the property likely to be affected by the action.⁸⁰
63. In relation to Ramsar wetlands, an assessment process should identify the parts of the ecological character of the wetland likely to be affected by the action.⁸¹

Considerations for accreditation:

64. 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.⁸²
65. 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.⁸³
66. 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.⁸⁴
67. Screening documentation includes sufficient information to identify all likely impacts on matters of national environmental significance.⁸⁵
68. 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.⁸⁶
69. 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 received⁸⁷ on those documents.⁸⁸
70. If an action assessed as having significant impacts on a matter of national environmental significance is approved, conditions of approval relating to matters protected under the EPBC Act are identified as such.⁸⁹

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.*

Standards:

71. The accredited process or arrangement must be set out in, or in force under, a law of the State or Territory.⁹⁰
72. There has been or will be adequate assessment of the impacts on matters of national environmental significance covered by the agreement.⁹¹
73. Assessment approaches (ie 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.⁹²

Considerations for accreditation:

74. 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.⁹³

*Examples of risk-based approaches to assessment, based on requirements under the EPBC Act, could include:*⁹⁴

- *Assessment on the basis of initial screening documentation provided by the proponent.*⁹⁵ *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.*⁹⁶
- *Assessment on initial screening documentation and further supplementary information provided by the proponent.*⁹⁷ *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.*⁹⁸ *This approach may be used when the environmental risk is medium to high with uncertain or complex impacts.*
- *Assessment by public inquiry.*⁹⁹ *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.*¹⁰⁰

Standards:

75. The accredited process or arrangement must be set out in, or in force under, a law of the State or Territory.¹⁰¹
76. There has been or will be adequate assessment of the impacts on matters of national environmental significance covered by the agreement.¹⁰²
77. 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 by a constitutional corporation;
 - (b) actions for the purposes of trade or commerce between Australia and another country, or between the States and 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).¹⁰³
78. In relation to World Heritage, the likely impacts of an action on the outstanding universal values of a property are assessed under a statutory environmental impact assessment and approval process. The assessment process examines how the outstanding universal values of the property might be affected 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.¹⁰⁴
79. 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 process. The assessment process examines how the ecological character of the wetland might be affected and any approval of the action should be subject to conditions, if necessary, to ensure that the ecological character of the wetland is maintained.¹⁰⁵
80. In relation to National Heritage, Indigenous peoples are recognised in the assessment and approval processes as the primary source of information on the value of their heritage.¹⁰⁶
81. All relevant impacts on matters of national environmental significance are identified separately in the assessment, not simply in the context of impacts on the environment generally.¹⁰⁷ This means that impacts are explicitly assessed for each matter of national environmental significance. Relevant impacts include likely indirect or facilitated impacts,¹⁰⁸ and cumulative impacts.¹⁰⁹
82. After an assessment, a recommendation report (or equivalent) is prepared by a government body independent of the proponent for consideration by the decision-maker.

Considerations for accreditation:

83. 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 should 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.¹¹⁰

84. The guidelines or terms of reference for an assessment 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.¹¹¹

85. 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.¹¹²

86. Proposed actions undergoing assessment are only varied if the variation is substantially the same character as the original action.¹¹³

87. 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.¹¹⁴

88. Matters of national environmental significance are dealt with separately and comprehensively in the recommendation report (or equivalent).¹¹⁵

89. 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.¹¹⁶

90. Decisions are made on the basis of all relevant information.¹¹⁷

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.*¹¹⁸

91. The decision-maker has regard to the principles of ecologically sustainable development, including the integration of economic, environmental and social considerations, the precautionary principle¹¹⁹ and the principle that the conservation of biological diversity and

ecological integrity should be a fundamental consideration¹²⁰ (see the extract from the Intergovernmental Agreement on the Environment set out at **Attachment K**).

92. The decision-maker may consider the environmental history of a person when deciding whether to grant an approval and attach conditions.¹²¹
93. The decision-maker attaches conditions to an approval if they are necessary or convenient to protect a matter of national environmental significance from avoidable harm or to repair or mitigate damage likely to be caused to a matter of national environmental significance as a result of the action.¹²²
94. If a proposed variation to an approval would result in a substantial increase or 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.¹²³

Transparent processes and decisions

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

Standards:

95. The accredited process or arrangement must be set out in, or in force under, a law of the State or Territory.¹²⁴
96. There has been or will be adequate assessment of the impacts on matters of national environmental significance covered by the bilateral agreement.¹²⁵
97. Assessments and decision-making processes engage all stakeholders including governments, the community, land-holders and indigenous peoples.¹²⁶
98. Assessments and decisions recognise the role and interests of indigenous peoples¹²⁷ in promoting the conservation and ecologically sustainable use of natural resources and promote the co-operative use of indigenous peoples' knowledge of biodiversity¹²⁸ and indigenous heritage.¹²⁹
99. Decisions are free from bias, transparent, consistent and subject to review by a court.¹³⁰
100. There is adequate opportunity for public consultation throughout the assessment and approval process.¹³¹

Considerations for accreditation:

Independent statutory decision-maker

101. The decision-maker makes an independent, statutory decision whether to approve a proposed action based on statutory criteria.¹³²

Public consultation

102. The public has access to a comprehensive range of documentation relating to the proposed action.¹³³ To ensure that documentation relating to matters of national environmental significance is free and easily accessible by all members of the Australian community:

- (a) States and Territories publish this documentation on the Internet; and
- (b) the documentation is also published by the Commonwealth on an appropriate national site.

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

- *initial screening or referral documentation;*¹³⁴
- *draft guidelines or terms of reference (if applicable);*¹³⁵
- *assessment documentation (such as draft public environment reports and environmental impact statements);*¹³⁶ *and*
- *proposed approval decisions and conditions.*¹³⁷

- 103. Special provision is made for groups with particular communication needs.¹³⁸
- 104. The public is given sufficient time to provide comment on the documentation.¹³⁹
- 105. Public comments are incorporated into the assessment and considered by the decision-maker.¹⁴⁰
- 106. States and Territories have appropriate mechanisms for engaging with Indigenous peoples regarding assessment and approval of proposed actions.¹⁴¹

Transparency of decision-making

- 107. All decisions and the material on which they are based are published on the Internet as soon as practicable after being made and are also published by the Commonwealth on an appropriate national website.¹⁴²
- 108. Statements of reasons are made available, on request from an aggrieved party, for:
 - (a) decisions on whether a proposed action is likely to have a significant impact on a matter of national environmental significance; and
 - (b) decisions on whether actions should be approved and, if so, what conditions should be attached.¹⁴³
- 109. Policy documents informing decision-makers are published.¹⁴⁴

Review by courts

- 110. 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.¹⁴⁵

5. Standards for assurance

- 111. Robust assurance mechanisms are important to give the Commonwealth Government and the Australian public confidence in the capacity of bilateral arrangements 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.

112. The standards below should be read in the context of the Commonwealth's proposals for 'Approach to Standards for Accreditation' in section 3 above.

Assurance

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

Standards:

Review and audit

113. A bilateral agreement must be reviewed at least once every 5 years while it is in effect¹⁴⁶ and may include provisions for review of all or part of the agreement.¹⁴⁷
114. Bilateral agreements must include provisions for auditing and monitoring on the operation and effectiveness of all or part of the agreement¹⁴⁸ and must include a provision recognising that, under the *Auditor-General Act 1997* (Cth), the Auditor-General may audit the operations of the Commonwealth public sector.¹⁴⁹

Reporting

115. A report of the reviews required under the EPBC Act must be provided to the relevant Minister of the State or Territory, and must be published.¹⁵⁰
116. The States and Territories provide information to allow the Commonwealth to meet its annual reporting obligations under the EPBC Act,¹⁵¹ including an analysis of how bilateral agreements have been implemented.¹⁵²

Information exchange

117. Bilateral agreements include provisions for the provision of information by one party to the other.¹⁵³

Compliance Role of States and Territories

118. States and Territories maintain an appropriate system to ensure compliance by proponents with conditions of approval that relate to matters of national environmental significance.

Suspension or revocation

119. Agreements include proportional measures to escalate and resolve non-compliance with the agreement, and disputes arising under the agreement.¹⁵⁴

Considerations for accreditation:

Review and audit

120. Administrative arrangements coordinate efficient implementation of the agreement and allow for early discussion regarding implementation.¹⁵⁵
121. Agreements provide for review in the first 5 years of operation. *For example, agreements could be jointly reviewed 12 months after commencement, to ensure the system is implemented and working effectively. Agreements could also be reviewed 3 years after commencement, involving possible third party review.*

122. Bilateral agreements provide for regular ongoing review, with provision for review by independent reviewers or auditors.

*Information exchange*¹⁵⁶

123. Agreements provide 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. 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 changing standards or investing in recovery action.
124. Agreed standards for data collection and storage are to be developed to facilitate data sharing and analysis. Data collected by proponents under conditions of approval are in a form able to be shared and combined with other sources, including national databases.
125. States and Territories (as relevant) and the Commonwealth inform each other of actions that have resulted or are likely to result in serious or irreversible damage to matters of national environmental significance.

Reporting

126. States and Territories respond to reasonable requests from the Commonwealth to supply information relating to accredited assessments and/or approvals covered by bilateral agreements.¹⁵⁷
127. Reports of reviews, including audits, are published.¹⁵⁸

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*¹⁵⁹

128. Findings of audits and other appropriate information (eg monitoring data), including management, mitigation or offsets plans relating to matters of national environmental significance are published.¹⁶⁰
129. In relation to approved projects relating to matters of national environmental significance, States and Territories have a robust range of enforcement and compliance options, injunctive and investigatory powers, capacity for audits, appropriate remediation orders and appropriate civil and criminal penalties.¹⁶¹ States and Territories provide for civil penalties and criminal liability of executive officers of corporations.¹⁶²

Suspension or revocation

130. Agreements recognise that the Minister may suspend or revoke an agreement if he or she is not satisfied that the State or Territory has complied or will comply with the agreement.¹⁶³ The EPBC Act includes provisions for emergency suspension if the Minister is satisfied that the relevant State or Territory is not complying with the agreement, or will not comply with it.¹⁶⁴
131. Agreements provide for the Commonwealth Environment Minister to determine that a particular action or class of actions is not covered by the bilateral¹⁶⁵ agreement where the Commonwealth Environment Minister considers that there has, or is likely to be, significant non-compliance with the bilateral agreement in relation to the action and that the action has resulted, or is likely to result, in serious or irreversible environmental damage.

Facilitating evolution of law and policy under bilateral agreements

132. To ensure that the reforms continue to deliver good outcomes over time, the Commonwealth and States will need to work cooperatively to continuously improve arrangements for the protection of matters of national environmental significance. This continual improvement will include updating standards, policies and approaches as new scientific information becomes available, as environmental conditions change and as we collectively increase knowledge and experience. The Commonwealth proposes discussion with the States and Territories on appropriate ways to ensure continuous improvement of accredited arrangements.
133. Bilateral agreements should also be responsive to changes in both Commonwealth and State legislation, consistent with maintenance of high environmental standards. 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.
134. For example, in response to recommendations of the Independent Review of the EPBC Act, the Commonwealth proposes to amend the EPBC Act in 2012. The amendments, if passed by Parliament, may be relevant to the scope and operation of bilateral arrangements and would be the subject of consultation and amendment of bilateral agreements where appropriate.

Attachment A - Tools to deliver conservation outcomes for matters of national environmental significance

MNES	Plans under EPBC Act	EPBC Act policy approaches	Programs
All (ie general)	<ul style="list-style-type: none"> • Bioregional plans (regional environment plans) 	<ul style="list-style-type: none"> • Conservation agreements • General policies, eg <ul style="list-style-type: none"> - Significant impact Guidelines • Industry Guidelines • Commonwealth Offsets Policy 	<ul style="list-style-type: none"> • Existing commonwealth programs <ul style="list-style-type: none"> - Caring for our Country - Biodiversity Fund
Threatened Species and Ecological Communities	<ul style="list-style-type: none"> • Recovery plans • Threat abatement plans 	<ul style="list-style-type: none"> • Listing advice • Conservation advice • Policy statements for individual nationally threatened species and ecological communities, including thresholds for impact of individual developments • Survey Guidelines for Nationally Threatened Species 	
Migratory Species	<ul style="list-style-type: none"> • Wildlife conservation plans (eg for Migratory Shorebirds) 	<ul style="list-style-type: none"> • Listing advice • Conservation advice • Policy statements for individual nationally threatened species and ecological communities • Survey Guidelines for Nationally Threatened Species 	
World Heritage	<ul style="list-style-type: none"> • Management plan/arrangements 	<ul style="list-style-type: none"> • Policy statements for individual sites 	
National Heritage	<ul style="list-style-type: none"> • Management plan/arrangements 	<ul style="list-style-type: none"> • Policy statements for individual sites 	
Ramsar wetlands	<ul style="list-style-type: none"> • Management plan/arrangements 	<ul style="list-style-type: none"> • Ecological character descriptions for individual sites 	eg Queensland Wetlands Program

Nuclear Actions	<ul style="list-style-type: none"> • Conservation agreement 	<ul style="list-style-type: none"> • Policy statements to guide requirements for whole of environment assessment and approval under the EPBC Act 	
Commonwealth Marine	<ul style="list-style-type: none"> • Bioregional plan • Wildlife conservation plans (eg for Migratory Shorebirds) 	<ul style="list-style-type: none"> • Policy statements to guide requirements for whole of environment assessment and approval under the EPBC Act 	
GBR Marine Park	<ul style="list-style-type: none"> • Plan of management under the <i>Great Barrier Reef Marine Park Act 1975</i> 	<ul style="list-style-type: none"> • Policy statements for specific activities, areas or matters of national environmental significance 	<ul style="list-style-type: none"> • Program for strategic assessment

Attachment B – 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 1992.¹⁶⁶

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,

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 1976.¹⁶⁷

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 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 1973.¹⁶⁸

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].

Attachment C – Draft model for a national list of threatened species and ecological communities¹⁶⁹

The National Threatened Species Listing Reform Project Group (the Listing Reform Project Group) has scoped options for developing a national approach to listing threatened species and ecological communities. NSW and the Australian Government are jointly leading this project.

Possible models for the national list alignment approach were developed and discussed by jurisdictions at workshops on 19 March and 3 April 2012, under the auspices of the COAG Working Group on Environment Regulation Reform. The Listing Reform Project Group agreed that the preferred Model was Model 1 - the Shared Assessment Model. Details of this are outlined below.

Shared Assessment Model

Overview:

1. States/territories have primary, but not exclusive, responsibility for assessing and listing endemic species, and the Commonwealth has primary responsibility for assessing inter-jurisdictional species.
2. The Commonwealth will retain the capacity to assess endemic species and would do so in consultation with relevant jurisdictions, to take account of resources and priorities in each jurisdiction.
3. Accreditation will provide for the results of an assessment undertaken by one jurisdiction to be adopted by another jurisdiction.
4. All states, territories and the Commonwealth will retain lists relative to their legislation and these lists will relate to each other and be represented through a single national portal.

Component features:

Species listing broadly comprises two main steps: nomination and assessment of eligibility for listing; and then the listing process itself. Details of these for the preferred model are outlined below and further elaborated in the table.

Assessment components

1. Assessment occurs at full range of species or ecological communities across all jurisdictions within Australia;
2. Generally, the Commonwealth receives and assesses nominations for cross-jurisdictional entities only;
3. Agreement between the ACT and NSW on how endemic species which cross borders are to be dealt with;
4. Where a state or territory receives a nomination relating to a cross-jurisdictional entity it is generally referred to the Commonwealth for assessment (unless predominantly within a jurisdiction); and
5. Where the Commonwealth receives a nomination relating to an entity that is endemic to a state or territory, it is generally referred to that state or territory for assessment.

Listing components

1. Create policy under existing approval mechanisms for the Commonwealth to accredit state and territory listing processes;
2. States and Territories create policy under existing approval mechanisms to accredit Commonwealth listing processes;
3. Retain listing bodies in all jurisdictions;
4. Retain listing functions in all jurisdictions;
5. Retain ministerial decision making in all jurisdictions.

Feature of model	Comment
Criteria based on IUCN criteria	Yes, based on IUCN criteria
Criteria for listing	Based on scientific information only (no social or economic factors to be taken into account when making a decision on whether to list or not)
Scientific committee	Yes, at both Commonwealth and State levels
Independent Scientific committee or accredited departmental process where applicable	Yes
Public consultation	Yes
Public nominations	Yes
Listing decision by	Minister at Commonwealth level, existing decision-maker in each state
Other significant details	Regular auditing for consistency of standards
	The potential for jurisdictions to provide exemptions from usual listing protections could be discussed as an option.
	Data and listing standards would need to be established.
Nominations/workplan	Annual scheduling discussions
Listing/presentation	National list portal
Listing consequences	No likely loss of existing protections Cooperation on recovery actions

Benefits/Issues Arising:

- Alignment of listing categories and criteria will reduce confusion and could lead to more efficient conservation outcomes;
- States/Territories would retain primary decision making capacity about listing of state-endemic entities at State/Territory and Commonwealth level;
- Duplication of assessment processes reduced or eliminated;
- Species that meet listing criteria will be listed/protected faster;
- Sharing of workload to enable more responsive assessment times;
- Regulatory change required;
- Accreditation of processes at both State/Territory/Commonwealth levels would need to be undertaken, based on agreed criteria; and
- For existing listings there will still be some misalignment due to different listings in different states (this would need to be resolved).

Examples of potential implementation scenarios for this model:

Scenario	Range	Assessment	Listing
A	Victoria	Commonwealth	Victoria and Commonwealth
B	Victoria	Victoria	Victoria and Commonwealth
C	VIC, NSW and SA	Commonwealth	VIC, NSW, SA and Commonwealth
D	VIC, NSW and SA	NSW (or equally by another jurisdiction in the range)	VIC, NSW, SA and Commonwealth
E	VIC, SA	Commonwealth	Vic, SA and Commonwealth
F	VIC, SA	South Australia (or equally by another jurisdiction in the range)	Vic, SA and Commonwealth

Attachment D – 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 1979.¹⁷⁰

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;
 - 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 1986.¹⁷¹

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.

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 1974.¹⁷²

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 Governments 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.

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 E – 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 1974.¹⁷³ 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.

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 F – 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 G – 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 H – 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 I – 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 1972.¹⁷⁴ 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,

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 J – 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 K – 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 ie 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.

¹ Matters of National Environmental Significance are: World Heritage, National Heritage, Wetlands of International Importance (Ramsar wetlands), Threatened Species and Communities, Migratory Species, Nuclear Actions, the Commonwealth Marine Area, and the Great Barrier Reef Marine Park. Seven of the eight 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.

² See also the 1997 *COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment*.

³ EPBC Act, section 3.

⁴ EPBC Act, section 3A.

⁵ The Act also regulates actions likely to have a significant impact on Commonwealth land; or on the environment generally when arising from Commonwealth actions. These matters are not dealt with further in these standards because, as matters of exclusive Commonwealth jurisdiction, they do not duplicate State and Territory approvals.

⁶ 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.

⁷ An approval bilateral agreement between the Commonwealth and New South Wales Governments was signed in 2005 in relation to the management plan for the Sydney Opera House. It expired in 2010, but is likely to be replaced by another instrument under the EPBC Act.

⁸ EPBC Act, section 47.

⁹ EPBC Act, paragraph 50(b).

¹⁰ EPBC Act, paragraphs 51(1)(a), 51(2)(a), 52(1)(a), 52(2)(a), 53(1)(a), 53(2)(a), 54(1)(a), 54(2)(a).

¹¹ EPBC Act, paragraphs 51(1)(b), 51(2)(b), 51A(1)(a), 51A(2), 52(1)(b), 52(2)(b).

¹² EPBC Act, paragraphs 53(1)(b), 53(2)(b), 54(1)(b), 54(2)(b).

¹³ EPBC Act, paragraph 46(3)(c).

¹⁴ EPBC Act, paragraphs 3(2)(b), 3(2)(c), 3(2)(d) and 3(2)(g) contain objectives that promote efficient and effective systems, which in turn supports broader productivity outcomes.

¹⁵ The latter category is derived from the structure of the EPBC Act and from Commonwealth administrative law and practice, rather than being an express accreditation requirement.

¹⁶ Currently the Act requires the preparation of a discrete World Heritage property management plan, but under proposed amendments the Commonwealth Minister could accredit an existing State plan as meeting EPBC Act requirements.

¹⁷ See page 5 of the *Statement of Environmental and Assurance Outcomes*.

¹⁸ The EPBC Act also provides protection in relation to other matters, specifically, actions taken by Commonwealth agencies and actions on Commonwealth land. These matters are not dealt with in this Framework of Standards document, as the EPBC Act does not contain specific requirements for bilateral agreements for these matters.

¹⁹ The matters protected are listed in section 34 of the EPBC Act.

²⁰ EPBC Act, paragraph 46(3)(c).

²¹ As noted in the Department of Sustainability, Environment, Water, Population and Communities Environment Assessment Manual May 2012, section 2F 'Is the action clearly unacceptable?'

<http://www.environment.gov.au/epbc/publications/pubs/environment-assessment-manual.pdf>.

²² 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 is developing a new policy 'EPBC Act Environmental Offsets Policy' to inform the use of environmental offsets under the EPBC Act. The Commonwealth, States and Territories are also cooperating through COAG to develop national approaches for environmental offsets and biodiversity banking.

²³ See the *EPBC Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012*.

²⁴ Note: This policy is currently a draft under development.

²⁵ Note: the *Statement of Environmental and Assurance Outcomes* uses the term 'critical habitat'. The full term is 'habitat critical to the survival of a species or community': paragraph 270(2)(d). Subsection 53(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for listed threatened species and ecological communities. Subsection 53(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for listed threatened species and ecological communities: the Minister must be satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Biodiversity Convention, the Apia Convention or CITES; will promote and/or enhance the conservation status of each relevant species or community; and is not inconsistent with any relevant recovery plan or threat abatement plan. The Minister must also have regard to any approved conservation advice for the species or community.

²⁶ This outcome statement reflects intended outcomes of Recovery Plans and Threat Abatement Plans under sections 269A, 270, 270B and 271 of the EPBC Act, and requirements for decision-making under section 139 of the EPBC Act.

²⁷ Subsection 53(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for listed threatened species and ecological communities. Subsection 53(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for listed threatened species and ecological communities: the Minister must be satisfied that the management arrangement or authorisation process is not inconsistent with the Convention on Biological Diversity, the Apia Convention, CITES; that the management arrangement or authorisation process will promote and/or enhance the conservation status of each relevant species or community to which it relates and is not inconsistent with any relevant recovery plan or a threat abatement plan; and the Minister has had regard to any approved conservation advice for the species or community.

²⁸ See **Attachment B** for an overview of these conventions.

²⁹ See EPBC Act, section 269A.

³⁰ See EPBC Act, section 270B.

³¹ See EPBC Act, section 266B.

³² No regulations are currently prescribed.

³³ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.

³⁴ A list of migratory species can be found at: <http://www.environment.gov.au/epbc/protect/migratory.html>.

³⁵ Subsection 54(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for listed migratory species. Subsection 54(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for listed migratory species: the Minister must be satisfied that the management arrangement or authorisation process is not inconsistent with the Bonn Convention, CAMBA, JAMBA, ROKAMBA or an international agreement approved under subsection 209(4) and that it will promote and/or enhance the conservation status of each relevant species.

³⁶ See **Attachment D** for an overview of these conventions.

³⁷ ROKAMBA was approved under subsection 209(4) of the EPBC Act on 27 February 2007.

³⁸ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.

³⁹ *Ramsar Convention (2005). Resolution IX.1 Annex A. A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character. 9th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands (Ramsar, Iran, 1971) Kampala, Uganda, 8-15 November 2005.* http://www.ramsar.org/cda/en/ramsar-documents-resol-resolution-ix-1-annex-a/main/ramsar/1-31-107%5E23536_4000_0__.

⁴⁰ Australian Ramsar management principles are set out in Schedule 6 of the EPBC Regulations. Each Ramsar site has an ecological character description which is developed by the site manager and endorsed by the State and Commonwealth governments. The list of current Ramsar listed sites can be found at: http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218_4000_0__. The ecological character descriptions are subsequently appended to the Ramsar List. See <http://ramsar.wetlands.org/Database/Searchforsites/tabid/765/Default.aspx>.

⁴¹ Subsection 52(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for Ramsar wetlands. Subsection 52(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for Ramsar wetlands: the Minister must be satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention and will promote the management of the property in accordance with the Australian Ramsar management principles.

⁴² See **Attachment E** for an overview of the Ramsar Convention.

⁴³ Australian Ramsar management principles are set out in Schedule 6 of the EPBC Regulations. Each Ramsar site has an ecological character description which is developed by the site manager and endorsed by the State and Commonwealth governments. The list of current Ramsar listed sites can be found at: http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218_4000_0__. The ecological character descriptions are subsequently appended to the Ramsar List. See <http://ramsar.wetlands.org/Database/Searchforsites/tabid/765/Default.aspx>. See also EPBC Act, subsection 335(1) and EPBC Regulations, regulation 10.02.

⁴⁴ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.

⁴⁵ See <http://www.environment.gov.au/water/topics/wetlands/ramsar-convention/australian-guidelines.html>.

⁴⁶ Department of the Environment, Water, Heritage and the Arts (2008). *National Framework and Guidance for Describing the Ecological Character of Australia's Ramsar Wetlands. Module 2 of the National Guidelines for Ramsar Wetlands—Implementing the Ramsar Convention in Australia*. Australian Government Department of the Environment, Water, Heritage and the Arts, Canberra.

⁴⁷ Department of the Environment, Water, Heritage and the Arts (2009). *National Guidelines for Notifying Change in Ecological Character of Australian Ramsar Sites (Article 3.2)*. Module 3 of the National Guidelines for Ramsar Wetlands—Implementing the Ramsar Convention in Australia. Australian Government Department of the Environment, Water, Heritage and the Arts, Canberra.

⁴⁸ Department of the Environment, Water, Heritage and the Arts (2008). *Mapping Specifications for Australian Ramsar Wetlands. Module 1 of the National Guidelines for Ramsar Wetlands – Implementing the Ramsar Convention in Australia*. Australian Government Department of the Environment, Water, Heritage and the Arts, Canberra.

⁴⁹ This outcome statement reflects the National Heritage management principles (in particular in the objective set out in Schedule 5B, item 1 of the EPBC Regulations 2000). The list of National Heritage properties can be viewed at: <http://www.environment.gov.au/heritage/places/national/index.html>. Australia's National Heritage properties include the Great Ocean Road, Bondi Beach and Ngarrabullgan. Each property has a statutory statement of its values against the nine national heritage list criteria, available at: <http://www.environment.gov.au/heritage/about/national/criteria.html>.

⁵⁰ Subsection 51A(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for National Heritage places. Subsection 51A(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for National Heritage places: the Minister must be satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

⁵¹ The Australian National Heritage management principles are set out in Schedule 5B to the EPBC Regulations. See also EPBC Act, subsection 324Y(1) and EPBC Regulations, regulation 10.01E.

⁵² EPBC Regulations, Part 2B.

⁵³ See EPBC Act, paragraph 137A(c).

⁵⁴ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.

⁵⁵ Statements of Outstanding Universal Value are available for some of Australia's 19 World heritage properties. The requirement that the outstanding universal value of World Heritage properties must be identified, protected, conserved, presented and transmitted to future generations, reflects and is consistent with Australia's obligations under Arts 4 and 5(d) of the *Convention for the Protection of the World Cultural and Natural Heritage* [1975] ATS 47 (World Heritage Convention).

⁵⁶ The process for the delisting of World Heritage properties is set out in the *Operational Guidelines for the Implementation of the World Heritage Convention* (at [192] - [198]).

⁵⁷ Subsection 51(1) of the EPBC Act sets out specific requirements in relation to bilateral agreements for World Heritage properties. Subsection 51(2) of the EPBC Act sets out similar requirements in relation to accrediting a management arrangement or authorisation process for World Heritage properties: the Minister must be satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention and will promote the management of the property in accordance with the Australian World Heritage management principles.

⁵⁸ See **Attachment I** for an overview of the World Heritage Convention.

⁵⁹ The Australian World Heritage management principles are set out in Schedule 5 to the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations). See also EPBC Act, subsection 323(1) and EPBC Regulations, regulation 10.01.

⁶⁰ EPBC Regulations, Part 2B.

⁶¹ 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.

⁶² See EPBC Act, paragraph 137(c).

⁶³ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.

⁶⁴ This outcome statement reflects the scope of protection for the environment in relation to nuclear actions, under section 21 of the EPBC Act.

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- ⁶⁵ Section 55 of the EPBC Act sets out specific requirements in relation to bilateral agreements and accrediting management arrangements or authorisation processes for nuclear actions.
- ⁶⁶ Section 140A EPBC Act provides that the Commonwealth Minister for Environment must not approve these types of actions.
- ⁶⁷ Section 22A of the EPBC Act provides that where a nuclear action is proposed, the matter protected under the EPBC Act relates to significant impacts on the whole of the environment.
- ⁶⁸ **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.
- ⁶⁹ This outcome reflects the scope of protection under section 23 and the intended outcomes under subsection 176(5) of the EPBC Act. The list of current marine bioregional plans can be found at: <http://www.environment.gov.au/coasts/mbp/index.html>.
- ⁷⁰ EPBC Act, section 354.
- ⁷¹ EPBC Act, subsection 176(5).
- ⁷² **Attachment A** identifies relevant plans, policies and programs available under the EPBC Act.
- ⁷³ The requirement that the outstanding universal value of World Heritage properties must be identified, protected, conserved, presented and transmitted to future generations, reflects and is consistent with Australia's obligations under Arts 4 and 5(d) of the *Convention for the Protection of the World Cultural and Natural Heritage* [1975] ATS 47 (World Heritage Convention).
- ⁷⁴ This outcome is consistent with Arts 4 and 5(d) of the World Heritage Convention and the *Great Barrier Reef Marine Park Act 1975*.
- ⁷⁵ See page 8 of the *Statement of Environmental and Assurance Outcomes*.
- ⁷⁶ EPBC Act, paragraphs 46(2)(a) and 46(2A)(a).
- ⁷⁷ Part 7 of the EPBC Act provides for significant impacts on matters of national environmental significance to be referred and identified.
- ⁷⁸ EPBC Act, section 527E.
- ⁷⁹ EPBC Act, paragraph 46(3)(b).
- ⁸⁰ Australian World Heritage management principles, paragraph 3.03(a). Paragraph 51(2)(a) requires the Minister to be satisfied that a management arrangement or authorisation process relating to World Heritage properties promotes the management of a property in accordance with the Australian World Heritage management principles.
- ⁸¹ Australian Ramsar management principles, paragraph 3.03(a). Paragraph 52(2)(a) requires the Minister to be satisfied that a management arrangement or authorisation process relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.
- ⁸² EPBC Act, section 68.
- ⁸³ EPBC Act, section 74A.
- ⁸⁴ EPBC Act, section 71.
- ⁸⁵ See EPBC Act, section 72 and Schedule 2 to the EPBC Regulations.
- ⁸⁶ EPBC Act, section 74A.
- ⁸⁷ Outcome 3.5 (Transparent processes and decision-making) sets out standards for public consultation.
- ⁸⁸ EPBC Act, subsection 75(1A).
- ⁸⁹ See generally EPBC Act, section 134.
- ⁹⁰ EPBC Act, paragraphs 46(2)(a) and 46(2A)(a).
- ⁹¹ EPBC Act, paragraph 46(3)(b).
- ⁹² EPBC Act, subsection 87(3).
- ⁹³ The notion of having 'enough information to make an informed decision' runs throughout the EPBC Act. See, for example, subsection 47(4), subsection 76(3), paragraph 84(3)(c), paragraph 87(4)(d), subsection 88(5) and paragraph 96A(3)(b).
- ⁹⁴ 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.
- ⁹⁵ See EPBC Act, Part 8, Division 3A.
- ⁹⁶ EPBC Act, subsection 87(4A) and EPBC Regulations, regulation 5.03A.
- ⁹⁷ 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.
- ⁹⁸ EPBC Act, Part 8, Divisions 5 and 6.
- ⁹⁹ EPBC Act, Part 8, Division 7.
- ¹⁰⁰ **Attachment K** extracts the principles of environmental policy from the *Intergovernmental Agreement on the Environment, 1992*.
- ¹⁰¹ EPBC Act, paragraphs 46(2)(a) and 46(2A)(a).
- ¹⁰² EPBC Act, subsection 46(3).

¹⁰³ EPBC Act, subsection 48A(3). All existing assessment bilateral agreements contain an undertaking as required by subsection 48A(3). ACT, SA, NSW, TAS, VIC, WA bilateral agreements, clause 10; NT bilateral agreement, clause 9; Qld bilateral agreement, clause 19; WA bilateral agreement, clause 17.

¹⁰⁴ Australian World Heritage management principles, clauses 3.02, 3.03 and 3.05. Subsection 51(2)(a) requires the Minister to be satisfied that a management arrangement or authorisation process relating to World Heritage properties promotes the management of a property in accordance with the Australian World Heritage management principles.

¹⁰⁵ Australian Ramsar management principles, clauses 3.02, 3.03 and 3.05. Subsection 52(2)(a) requires the Minister to be satisfied that a management arrangement or authorisation process relating to Ramsar wetlands promotes the management of the wetland in accordance with the Australian Ramsar management principles.

¹⁰⁶ National Heritage management principles, clause 6. Subsection 51A(2) requires the Minister to be satisfied that a management arrangement or authorisation process relating to National Heritage places promotes the management of the place in accordance with the National Heritage management principles.

¹⁰⁷ Subsection 46(3) of the EPBC Act provides that the Minister must, to accredit an approval process, be satisfied that there will be an adequate assessment of the impacts that the action is likely to have on *each* matter of national environmental significance.

¹⁰⁸ EPBC Act, section 527E.

¹⁰⁹ See *Western Australian Land Authority (Landcorp) v Minister for Sustainability, Environment, Water, Population and Communities* [2012] FCA 226.

¹¹⁰ See EPBC Act, subsection 97(2) and paragraph 102(2)(b).

¹¹¹ 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.

¹¹² See EPBC Act, Part 8, Division 7 which deals with Inquiries.

¹¹³ EPBC Act, section 156B.

¹¹⁴ EPBC Act, sections 93, 95C, 100 and 105.

¹¹⁵ Subsection 46(3) of the EPBC Act provides that the Minister must, to accredit an approval process, be satisfied that there will be an adequate assessment of the impacts that the action is likely to have on *each* matter of national environmental significance.

¹¹⁶ 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.

¹¹⁷ EPBC Act, section 136.

¹¹⁸ EPBC Act, subsection 136(2).

¹¹⁹ EPBC Act, section 3A.

¹²⁰ EPBC Act, section 3A and 136 (general considerations) .

¹²¹ EPBC Act, subsection 136(4).

¹²² See, for example EPBC Act, subsection 134(1). Other criteria for decision-making appear throughout the EPBC Act.

¹²³ EPBC Act, Part 11, Division 1A.

¹²⁴ EPBC Act, paragraphs 46(2)(a) and 46(2A)(a).

¹²⁵ EPBC Act, subsection 46(3).

¹²⁶ EPBC Act, paragraph 3(1)(d). In relation to World Heritage properties and Ramsar wetlands see paragraphs 3.03(c) of the Australian World Heritage management principles and Australian Ramsar wetland management principles respectively.

¹²⁷ EPBC Act, paragraphs 3(1)(f) and 49A(c).

¹²⁸ EPBC Act, paragraphs 3(1)(g) and 49A(c).

¹²⁹ National Heritage management principles, clause 6; EPBC Act, paragraph 49A(c).

¹³⁰ This reflects law and practice under the EPBC Act and other Commonwealth laws relating to administrative law such as the ADJR Act.

¹³¹ 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 paragraph 3.03(c)).

¹³² EPBC Act, section 134. Under the EPBC Act, the Commonwealth Minister for Environment is a statutory decision-maker and must not act under the direction of any other person, including Cabinet or another Minister.

¹³³ In accordance with the EPBC Act, assessment documentation is published on the Internet at: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referrals;limit=7. See also Part 16 of the EPBC Regulations which sets out requirements for publication under the EPBC Act.

¹³⁴ EPBC Act, subsection 74(3).

¹³⁵ EPBC Act, subsections 97(5) and 102(5).

¹³⁶ EPBC Act, sections 95, 98 and 103.

¹³⁷ EPBC Act, sections 131AA, 133 and 134.

¹³⁸ Existing assessment bilateral provisions make provision for public access to assessment documentation, including to groups with particular needs. Subregulation 16.04A(1) of the EPBC Regulations 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.

¹³⁹ The EPBC Act sets out minimum periods for comment. See, for example, subsection 93(3), 98(3) and 103(3).

¹⁴⁰ The EPBC Act requires that public comment must be taken into account. See, for example, subsections 99(2) and 104(2).

¹⁴¹ EPBC Act, section 49A(c). The Indigenous Advisory Committee is established under Part 19, Division 2A. The agenda of the Indigenous Advisory Committee includes matters regarding the assessment and approval of proposed actions under the EPBC Act.

¹⁴² EPBC Act, paragraph 133(3)(b). 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.

¹⁴³ This is Commonwealth practice deriving from the *Administrative Decisions (Judicial Review) Act 1977* (Cth), section 13.

¹⁴⁴ 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.

¹⁴⁵ 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.

¹⁴⁶ EPBC Act, section 65.

¹⁴⁷ EPBC Act, subparagraph 48(1)(e)(iii). Existing bilateral agreements provide that reviews should be carried out jointly between the parties; evaluate the operation of the agreement against its objects, and seek views of stakeholders. Bilateral agreements have also been reviewed in response to amendments to state legislation for new forms of environmental impact assessment and to clarify administrative roles of the parties. Amendments to clarify administrative roles were made to the Queensland bilateral agreement on 14 June 2012.

¹⁴⁸ EPBC Act, subparagraph 48(1)(e)(ii).

¹⁴⁹ EPBC Act, subsection 48A(4).

¹⁵⁰ EPBC Act, subsections 65(2) and (3). Paragraph 48(1)(d) also provides that bilateral agreements may include provisions for publication of information.

¹⁵¹ Section 516 of the EPBC Act provides that the Secretary of SEWPAC 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.

¹⁵² EPBC Act, subparagraph 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.

¹⁵³ EPBC Act, paragraph 48(1)(c).

¹⁵⁴ EPBC Act, sections 57 - 64.

¹⁵⁵ Existing assessment bilateral agreements provide for the parties to jointly develop administrative procedures to ensure that the requirements of the agreements are administered efficiently: NSW, SA, Tas, Vic, bilateral agreements, clause 19, ACT, Qld bilateral agreements, clause 21; NT bilateral agreement, clause 18, WA bilateral agreement, clause 20.

¹⁵⁶ Existing bilateral agreements include provisions for exchange of information between the parties: NSW, Tas, Vic, NT bilateral agreements, clauses 23, 24; SA, Qld, Vic bilateral agreements, clauses 24, 25; ACT bilateral agreement, clauses 27, 28; WA bilateral agreement, clauses 25, 26. Existing bilateral agreements also provide that administrative arrangements will include guidelines on the exchange of information: NSW, SA, Tas, Vic bilateral agreements, clauses 19; ACT bilateral agreement, clause 21; NT bilateral agreement, clause 18; WA bilateral agreement, clause 20.

¹⁵⁷ Existing bilateral agreements provide for exchange of information between the parties relating to the management or administration of assessments covered by the agreements.

¹⁵⁸ Summaries of compliance audits under the EPBC Act are published at: <http://environment.gov.au/epbc/compliance/auditing.html>.

¹⁵⁹ Existing bilateral agreements include provisions for the parties to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication: SA, NSW, Tas, Vic bilateral agreements, clauses 16; ACT bilateral agreement, clause 20; NT bilateral agreement, clause 15; Qld bilateral agreement, clause 19; WA bilateral agreement, clause 17. Under existing bilateral agreements, the parties also agree to inform the other of actions to prosecute a person for breaching conditions of an approval by both parties, where the conditions relate to a matter protected by the EPBC Act: SA, NSW, Tas, Vic bilateral agreements, clauses 17; ACT bilateral agreement, clause 20.2; NT bilateral agreement, clause 16; Qld bilateral agreement, clause 20; WA bilateral agreement, clause 18.

¹⁶⁰ Standard conditions of approval under the EPBC Act require environmental management plans and environmental reports to be published on the Internet.

¹⁶¹ Civil and criminal penalties for significant impacts on matters of national environmental significance are in Part 3 of the EPBC Act. For example, maximum civil penalties for significant impacts on listed threatened species and communities include \$550,000 for an individual and \$5,500,000 for a company. Part 17 of the EPBC Act deals generally with enforcement.

¹⁶² EPBC Act, Part 18, Division 18 provides for liability of executive officers for corporations.

¹⁶³ EPBC Act, sections 57 - 64.

¹⁶⁴ EPBC Act, section 60.

¹⁶⁵ Existing assessment bilateral agreements include a provision which enables the Commonwealth Environment Minister to determine that a particular action is not within a class of actions to which the bilateral agreement applies: Qld bilateral agreement, clause 10; Tas bilateral agreement, clause 9.7; Vic bilateral agreement, clause 9.

¹⁶⁶ EPBC Act, section 528.

¹⁶⁷ EPBC Act, section 528.

¹⁶⁸ EPBC Act, section 528.

¹⁶⁹ Referred to as the 'Split Accountability Model' in previous drafts.

¹⁷⁰ EPBC Act, section 528.

¹⁷¹ EPBC Act, section 528.

¹⁷² EPBC Act, section 528.

¹⁷³ EPBC Act, section 528.

¹⁷⁴ EPBC Act, section 528.