



Australian Government

**Australian Government Response to the Senate Standing
Committee on
Environment, Communications and the Arts
Committee Report:**

***Operations of the Environment Protection and Biodiversity Conservation
Act 1999 (First, Second and Final Reports)***

September 2011

**AUSTRALIAN GOVERNMENT RESPONSE TO THE SENATE INQUIRY INTO
THE OPERATION OF THE *ENVIRONMENT PROTECTION AND
BIODIVERSITY CONSERVATION ACT 1999* (CTH)**

The Senate Standing Committee on Environment, Communications and the Arts commenced an inquiry into the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) in 2008. The Inquiry produced two reports: the first report, tabled on 18 March 2009, covered the operation of the EPBC Act generally and the second report, tabled on 30 April 2009, covered the interaction between the EPBC Act and the *Regional Forest Agreement Act 2002* (Cth).

On 13 March 2009, the then Minister for the Environment, Heritage and the Arts, the Hon Peter Garrett AM MP wrote to the independent reviewer of the EPBC Act, Dr Allan Hawke and requested that Dr Hawke consider the findings and recommendations of the Senate Inquiry in his Independent Review of the EPBC Act.

The recommendations of the Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Review Report) have taken into account the recommendations of the Senate Inquiry. The Australian Government Response to the Senate Inquiry is based on the Australian Government Response to the Review Report.

The Australian Government Response to the Review Report has been released and can be found at <http://www.environment.gov.au/epbc/publications/epbc-review-govt-response.html>

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1. The committee recommends that the objects of the Act be amended to remove the words 'to provide for' from section 3(1)(a) and 3(1)(ca).	<p>Not agreed</p> <p>The Australian Government does not agree to amend the objects of the Act. The government view is that the objects of the EPBC Act are already sufficiently clear and that there is no need to change them at the present time.</p> <p>See also the response to Recommendations 1 and 3 of the Review Report.</p>
2. The committee recommends that the appropriateness of a greenhouse trigger under the Act and the nature of any such trigger, should it be required, be carefully considered in light of the findings of the independent review and in the context of the	<p>Noted</p> <p>See the government response to Recommendation 10 of the Review Report.</p>

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government's overall response to climate change, in particular the CPRS.	
<p>3. The committee recommends that, having regard to the conclusions of the review of the <i>National Framework for the Management and Monitoring of Australia's Native Vegetation</i> currently underway, and in light of advice from the Threatened Species Scientific Committee, the government should consider including a land clearing trigger in the Act.</p>	<p>Noted</p> <p>The Review Report, after careful consideration, did not recommend a land clearing trigger due to difficulties in defining significant impact and the existence of land clearance controls at state and territory level.</p> <p>The Australian Government agrees with the Review Report and does not support the inclusion of a land clearing trigger in the EPBC Act. The government notes that the EPBC Act already regulates land clearing which will have, has had or is likely to have a significant impact on a matter of national environmental significance (NES), for example where the vegetation proposed to be cleared is a significant area of habitat for a threatened species. The government proposes to include 'ecosystems of national significance' as a new matter of NES within the amended Act. This will further improve protection of native vegetation: see also the government response to Recommendation 8 of the Review Report.</p>
<p>4. The committee recommends that the government give urgent consideration to increasing the resources available to the department in the areas of assessment, monitoring, complaint investigation, compliance, auditing projects approved under Part 3, and enforcement action.</p>	<p>Noted</p> <p>The Australian Government's response to Recommendation 62 of the Review Report states that it will explore options for recovering some or all of the costs of administering the Act, and that the pace and scale of implementation of the reform package will be directly determined by cost recovery.</p> <p>Appropriate cost recovery arrangements can more equitably share the costs of protecting the environment between the community and those who derive a private benefit and a social licence from an activity that is approved under the Act. Cost recovery will</p>

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	<p>also allow environmental assessments and approvals to keep pace with Australia's growing economy.</p> <p>The government will be undertaking a comprehensive consultation process on potential cost recovery arrangements in accordance with the Australian Government Cost Recovery Guidelines. This will directly inform a Cost Recovery Impact Statement to ensure that government is fully informed in taking a decision on potential new cost recovery arrangements, and on the subsequently determining the size and scale of the reform package.</p>
<p>5. The committee recommends that the department undertake regular evaluation of the long-term environmental outcomes of decisions made under the Act, and that the government ensure agency resources are adequate to undertake this new activity.</p>	<p>Agreed in principle</p> <p>The Australian Government's response to the Review Report agrees to:</p> <ul style="list-style-type: none"> • Further investigate a system for National Environmental Accounts (see the response to Recommendation 67) • Audit the outcomes of environmental approval (see the response to Recommendation 24); and • Establish a broad compliance and performance audit power (see the response to Recommendation 61). <p>Together, these initiatives will significantly increase the capacity of the department to evaluate outcomes.</p>
<p>6. The committee recommends that the Independent Review of the EPBC Act and / or the ANAO examine the effect of existing bilateral agreements on the quality of environmental assessments of matters of national environmental significance. The committee suggests that particular regard be given to the transparency of,</p>	<p>Noted</p> <p>The findings of the Review Report support the continuation of bilateral agreements. In its response to the Review Report, the Australian Government has committed to the development of national standards for environmental impact assessment and for accrediting decisions by states in relation to matters of national environmental significance. While these standards have yet</p>

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<p>public engagement in, and appeal rights in relation to assessments performed under a bilateral agreement, compared to the conditions that would have existed had the assessment been performed under the EPBC Act.</p>	<p>to be developed, the government is committed to the principle of equivalent protection: that is, any State and Territory legislation that is accredited should deliver an equivalent level of environment protection and due process, to that which would otherwise apply under the EPBC Act. See also the government response to Recommendation 4 of the Review Report.</p>
<p>7. The committee recommends that the government review the interaction between the EPBC Act and the Fisheries Management Act in relation to the conservation of fish species and relevant assessment processes.</p>	<p>Agreed in principle</p> <p>The Australian Government agrees to amend the EPBC Act to streamline the interaction between the fisheries assessment provisions in Parts 10, 13 and 13A. The government will also improve the interaction between the EPBC Act and the Fisheries Management Act by linking the Commonwealth Fisheries Harvest Strategy Policy framework with the threatened species listing process for marine fish under the EPBC Act. The government will be undertaking a further review of the <i>Fisheries Management Act 1991</i> to address potential duplication with the EPBC Act.</p>
<p>8. The committee recommends that the process for nomination and listing of threatened species or ecological communities be amended to improve transparency, rigour and timeliness. Changes that should be considered include:</p> <ul style="list-style-type: none"> • Either requiring publication of the Scientific Committee's proposed priority assessment list or reducing ministerial discretion to revise the priority list under section 194K; and • Reducing the maximum period allowed for an assessment under section 194P(3). 	<p>Agreed In-Principle</p> <p>In responding to the Review Report, the Australian Government has agreed to the establishment of a single list of nationally threatened species and ecological communities. The Government will be working with state and territory governments to establish a harmonised listing process.</p> <p>The Government supports increased transparency in the species listing processes and agrees to publicly release the advice of the new Biodiversity Scientific Advisory Committee (see response to Recommendation 44).</p>

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<p>9. The committee recommends that government policy regarding the use of 'offsets' for habitat conservation state that the use of offsets:</p> <p>is a last resort;</p> <p>must deliver a net environmental gain; and</p> <p>should not be accepted as a mitigating mechanism in instances where other policies or legislation (such as state vegetation protection laws) are already protecting the habitat proposed for use as an offset.</p>	<p>Agreed in part</p> <p>See the Australian Government's response to Recommendation 7 of the Review Report, which agrees to lead consideration by a suitable inter-jurisdictional forum of a national system or national standards to provide consistency across jurisdictions for biodiversity banking and the use of offsets. The Government will release a policy on environmental offsets to provide greater certainty for business and improve environmental outcomes.</p>
<p>10. The committee recommends that consideration be given to expanding the scope for merits review in relation to ministerial decisions under the Act, particularly in relation to:</p> <ul style="list-style-type: none"> • whether an action is a controlled action, • assessment decisions; and • decisions on whether a species or ecological community is to be listed under the Act. <p>The committee recommends that the independent review examine this possibility in the first instance, and that the process of consideration should include consultation with the Administrative Appeals Tribunal.</p>	<p>Noted</p> <p>The Australian Government regards controlled action, assessment decisions and listing decisions as inappropriate for merits review.</p> <p>The controlled action and assessment approach decisions are preliminary "filtering" decisions to determine whether the environmental impact assessment regime of the Act has been triggered, and if so, what level of assessment is appropriate. The short statutory timeframes for making such decisions reflect the Parliament's desire for an efficient and timely process as set out in the Objects of the Act. The government considers that there is no environmental benefit to be gained by merits review of these preliminary decisions and there is considerable risk of frustrating an efficient and timely process.</p> <p>In reaching these conclusions the government notes that the Review Report stopped short of recommending a change. Indeed, the Review Report drew attention to the fact that merits review of these decisions could slow down the process. The Review Report also queried whether the nature of the controlled action decision makes it</p>

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	<p>suitable for merits review. The government agrees with both these points: see also the government responses to Recommendations 48, 49 and 50 of the Review Report.</p> <p>The government also considers that decisions on whether to list a species or ecological community under the Act are inappropriate for merits review. As outlined in the government's response to Recommendation 15 of the Review Report, the listing process is based on an independent and rigorous scientific assessment by the Threatened Species Scientific Committee. The government supports continuation of this process under the amended Act.</p> <p>The government agrees that there is scope to improve the transparency and quality of the decision-making process. This will be achieved through the implementation of the changes contained in the government's responses to Recommendations 44–46.</p> <p>The government notes that the independent review process included consultation with the Administrative Appeals Tribunal.</p>

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<p>Recommendation 1, Second Report:</p> <p>The committee notes that the Minister for Environment has formally asked the Independent Review of the EPBC Act to consider the findings and recommendations of this inquiry (see letter 13 March 2009). Accordingly the committee recommends that the Independent Review consider the findings in this report and recommend proposals for reform that would</p>	<p>Agreed-In-Part</p> <p>The Australian Government notes that the Review Report considered the proposals of the second Senate Inquiry report. See the Government's response to Recommendations 38 and 39 of the Review Report.</p>

<p>ensure that RFAs, in respect of matters within the scope of Part 3 of the EPBC Act, deliver environmental protection outcomes, appeal rights, and enforcement mechanisms no weaker than if the EPBC Act directly applied.</p>	
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