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In-House Memo

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Status of Federal Environment Legislation and Bilateral Agreements

The Federal Government's 'One Stop Shop' framework includes a network of bilateral agreements established under the EPBC Act, which delegate approval powers for projects assessed under EPBC Act to the States and Territories. The Federal Department of the Environment has noted that:

"[The policy] aims to simplify the approvals process for businesses, lead to swifter decisions and improve Australia's investment climate, while maintaining high environmental standards."

Concern exists that these changes may be removing the Federal Government's 'safety net' role in assessing matters of national environmental significance. In the past, for example, the Federal government has played a role in protecting national environmental values by intervening in and stopping State government approved projects.

Professor Fowler spoke of the role of the Commonwealth in the environment and its EIA process, warning of the possible effects of an 'eight stop shop'. He argued for the existence of:

"a pressing need for a nationally driven, state of the art, Commonwealth environmental law..."

The Bilateral Agreement Implementation Bill has moved from the House of Representatives to the Senate, but its second reading there has been adjourned and it is not yet been scheduled for resumption. Amongst other matters, the Bill provides that States and Territories can be accredited under the EPBC Act for approval decisions on large coal mining and coal seam gas developments likely to have a significant impact on a water resource.

The EPBC Act provides for two different types of Bilateral Agreement (BA): Assessment BAs and Approval BAs.

- Assessment BAs provide that certain actions do not require Commonwealth assessment if they are assessed by certain state and/or territory-level assessments, but the Commonwealth Minister for the Environment still must approve of an action before it may be undertaken;
- Approval BAs provide that certain actions do not require Commonwealth approval if they were assessed and approved by the relevant state and/or territory environment minister.

The Commonwealth Department of the Environment provides the following information on the status of Bilateral Agreements:

- Commonwealth has declared its intention to draft Approval Bilateral Agreements for all States and Territories
 - Currently no States or Territories have an Approval BA in effect;
 - Currently all States and Territories have an Assessment BA in effect, although QLD, NT, VIC and TAS are drafting revised Assessment BAs.
- ACT, NSW, QLD, and TAS have released draft Approval BAs, which now await the Minister's response after a period of public comments; NT, SA, VIC and WA have published notices of intention to develop a draft Approval BA.
- NT, VIC, QLD and TAS already have draft Assessment BAs released to public:
 - NT, VIC and TAS have their public comment staged completed. They now await Minister's report on comments to proceed
 - QLD is currently accepting public comment until 21 November 2014

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State/Territory	Matters no longer Commonwealth Minister's Approval
ACT	National Heritage Ramsar Wetlands Listed threatened species and ecological communities Listed migratory species Nuclear actions
NSW	World Heritage properties National Heritage Ramsar Wetlands Listed threatened species and ecological communities Listed migratory species Nuclear actions Actions involving coal seam gas development or large mining development with significant impact on water resource
QLD	World Heritage properties National Heritage places Ramsar wetlands Listed threatened species and ecological communities Listed migratory species Nuclear actions Commonwealth marine environment Great Barrier Reef Marine Park Actions involving Commonwealth land Actions involving coal seam gas or large coal mining development where the action has, will have, or is likely to have a significant impact on a water resource
TAS	World Heritage properties National Heritage Ramsar wetlands Listed threatened species and ecological communities Listed migratory species Nuclear actions Actions involving coal seam gas development or large mining development with significant impact on a water resource

State/Territory	Classes that the State/Territory may assess
NT	All classes of actions as long as done within accepted method of assessment: Public Environmental Report Environmental Impact Statement Inquiry
VIC	All classes of actions as long as done within accepted method of assessment: Comprehensive Impact Statement Environmental Effect Statement Assessment under s 151, <i>Planning and Environment Act 1987</i> Assessment through permit application process under <i>Planning and Environment Act 1987</i> Assessment through works approval under <i>Environment Protection Act 1970</i> Assessment under application for approval under <i>Water Act 1989</i> Assessment under permit application process under <i>Heritage Act 1995</i>
TAS	The following classes of action: World Heritage properties National Heritage places Ramsar wetlands Listed threatened species and communities Listed migratory species Nuclear actions Actions involving coal seam gas development or large mining development with significant impact on water resource

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As an update, we include the status of proposed Federal environment legislation, which is summarised in the table below. The bills mentioned are major to the Commonwealth government's new environmental policy and particularly its carbon pricing and 'one stop shop' approvals policy.

Bill	Status	Notes
Carbon Farming Initiative Amendment Bill 2014 ¹	Senate	Third reading agreed to (30/10/14)
Climate Change Authority (Abolition) Bill 2013 [No. 2]	Senate	Second reading debate adjourned
Clean Energy Finance Corporation (Abolition) Bill 2014	Reps	Second reading debate resumed (29/10/14)
Environment Legislation Amendment Bill 2013 ²	Senate	Second reading debate adjourned
Environment Protection and Biodiversity Conservation Amendment (Alpine Grazing) Bill 2014	Senate	Second reading debate adjourned
Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014	Senate	Second reading debate adjourned
Environment Protection and Biodiversity Conservation Amendment Bill 2014	Senate	Second reading debate adjourned
Clean Energy Legislation (Carbon Tax Repeal) Bill 2014	Act	
Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014	Act	
True-up Shortfall Levy (General) (Carbon Tax Repeal) Bill 2014	Act	

Nicholas Lee
Cameron Algie
29 October 2014

¹ This Bill establishes the ERF to replace the carbon tax and provide a transition for the CFI.

² This Bill relates to retrospective non-compliance with approved conservation advice

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