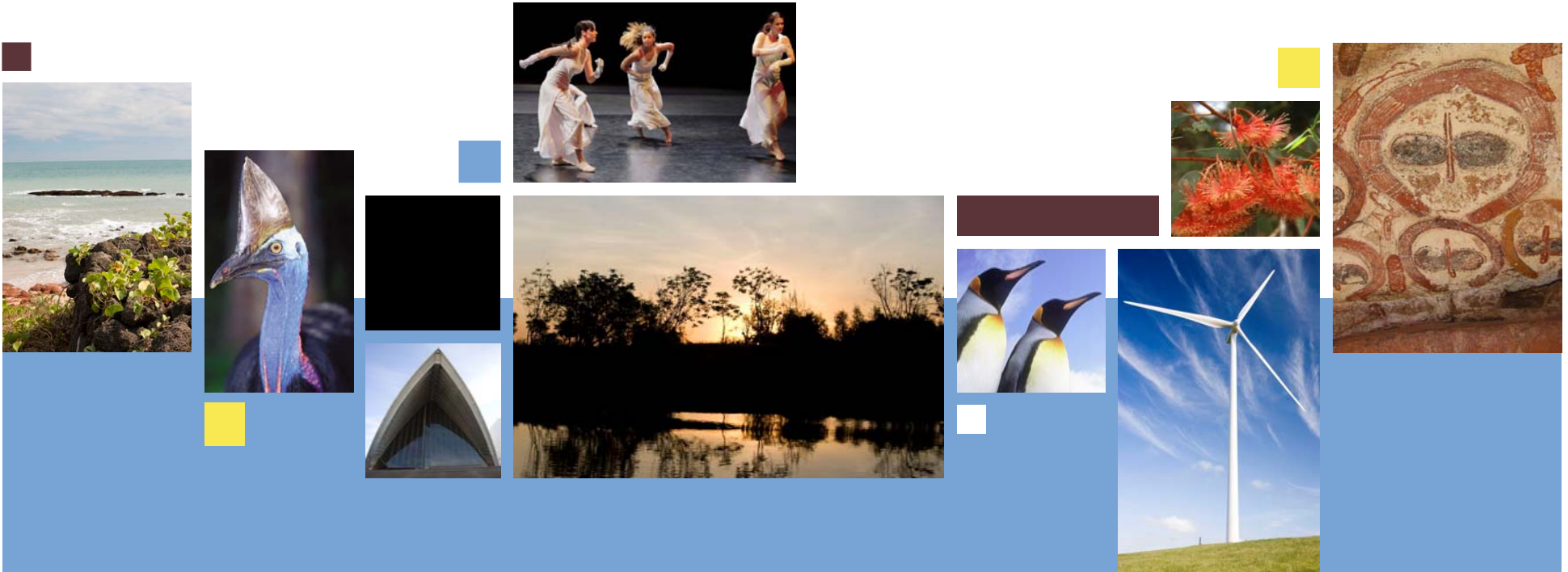




**Australian Government**

**Department of the Environment,  
Water, Heritage and the Arts**

# The *EPBC Act* where to from here?



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**Terry Bailey**  
**Assistant Secretary**  
**Approvals and Wildlife Division**

Cassowary (Wet Tropics Management Authority- QLD) Rock art (C.Zwick)



# Outline

A brief history ... of the EPBC Act:

- pre 2000 (a silent **Constitution**)
- 2000 – c.2007 (the **Approval** and **Bilateral** era)
- c.2007 – 2010 (the emergence of **Strategic approaches**)

The next phase ...

- 2010 → and **beyond**



# A brief history ... of the EPBC Act

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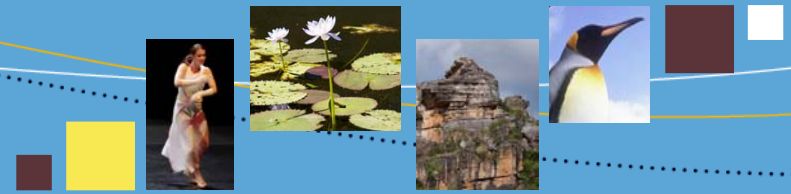
Using a **silent** Constitution

- 1975 – **Fraser Government** prevents sand mining on **Fraser Island** (export powers)
  - 1983 – **Hawke Government** stops Gordon below **Franklin** Dam (external affairs power)
- 
- 1992 – **Intergovernmental** Agreement on the **Environment** signed
  - 1997 – **Heads of Agreement** on the Environment signed (Commonwealth roles and responsibilities)



## A brief history ... of the EPBC Act cont.

- **EPBC Act** passed parliament in 1999 and commenced on **16 July 2000** with **six** matters of **national environmental significance**
  - National Heritage (corporations and trade/commerce powers)
  - Great Barrier Reef Marine Park
- Regulates likely **significant impacts** on these matters and relies on State / Territory legislation
- In addition regulates:
  - **wildlife** trade
  - Commonwealth **reserves**
  - Commonwealth **heritage**
  - **biological** resources ... etc



## 2000 – c.2007 approval and bilateral era

- Between July 2000 and March 2010 - **3409** referrals
- 817 **controlled actions** and 16 **unacceptable actions**

Major sectors:	Ref	Ref %	CA	CA %
<b>Residential developments</b>	<b>519</b>	<b>15.2%</b>	<b>147</b>	<b>18%</b>
Mining	385	11.3%	181	22.2%
Energy generation	343	10.1%	79	9.7%
Exploration	315	9.2%	12	1.5%
Land transport	311	9.1%	68	8.3%
Tourism and Recreation	233	6.8%	52	6.4%
Water management and use	220	6.5%	53	6.5%



## 2000 – c.2007 approval and bilateral era

Between 1 January 2005 and 1 January 2010 - 305 '**residential developments**' were referred under the Act out of 1,922 referrals (15.9%), of these:

- 114 were '**not controlled actions**'
- 49 were not 'controlled actions - **particular manner**'
- 103 **were controlled** actions, requiring approval
- 39 have not yet received a decision (**withdrawn or ongoing**)
- 1 was **unacceptable**

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In addition **assessment bilateral** agreements developed with all State and Territories

One **approval bilateral** agreement developed (Sydney Opera House)



## 2007 – 2010 ... Strategic approaches

EPBC Act was amended in 2006 – including to approve **classes of actions** in a strategic assessment

A **plan, policy or program** is assessed, including a spatial land use plan or a particular government policy

**Strategic Assessments** focus on:

- **collaborative approaches** between Governments
- moving to being **proactive not reactive**
- providing **greater certainty** for proponents
- taking into account **cumulative impacts**
- achieving **landscape** scale conservation outcomes

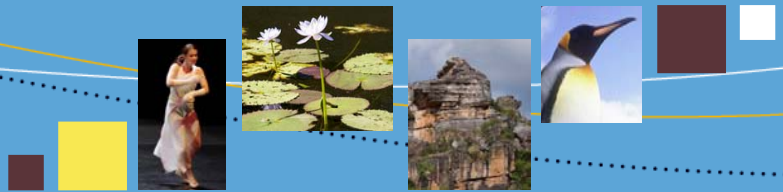


## 2007 – 2010 Strategic approaches cont.

Current Strategic Assessments are:

- WA – Browse Basin LNG Precinct
- NSW – Western Sydney Urban Growth Centres
- ACT – Molonglo Valley Housing Development
- Qld – Mt Peter Urban Development (Cairns)
- Tas – Midlands Water Scheme
- SA – Fire Management Policy
- Vic - Melbourne Urban Growth Expansion

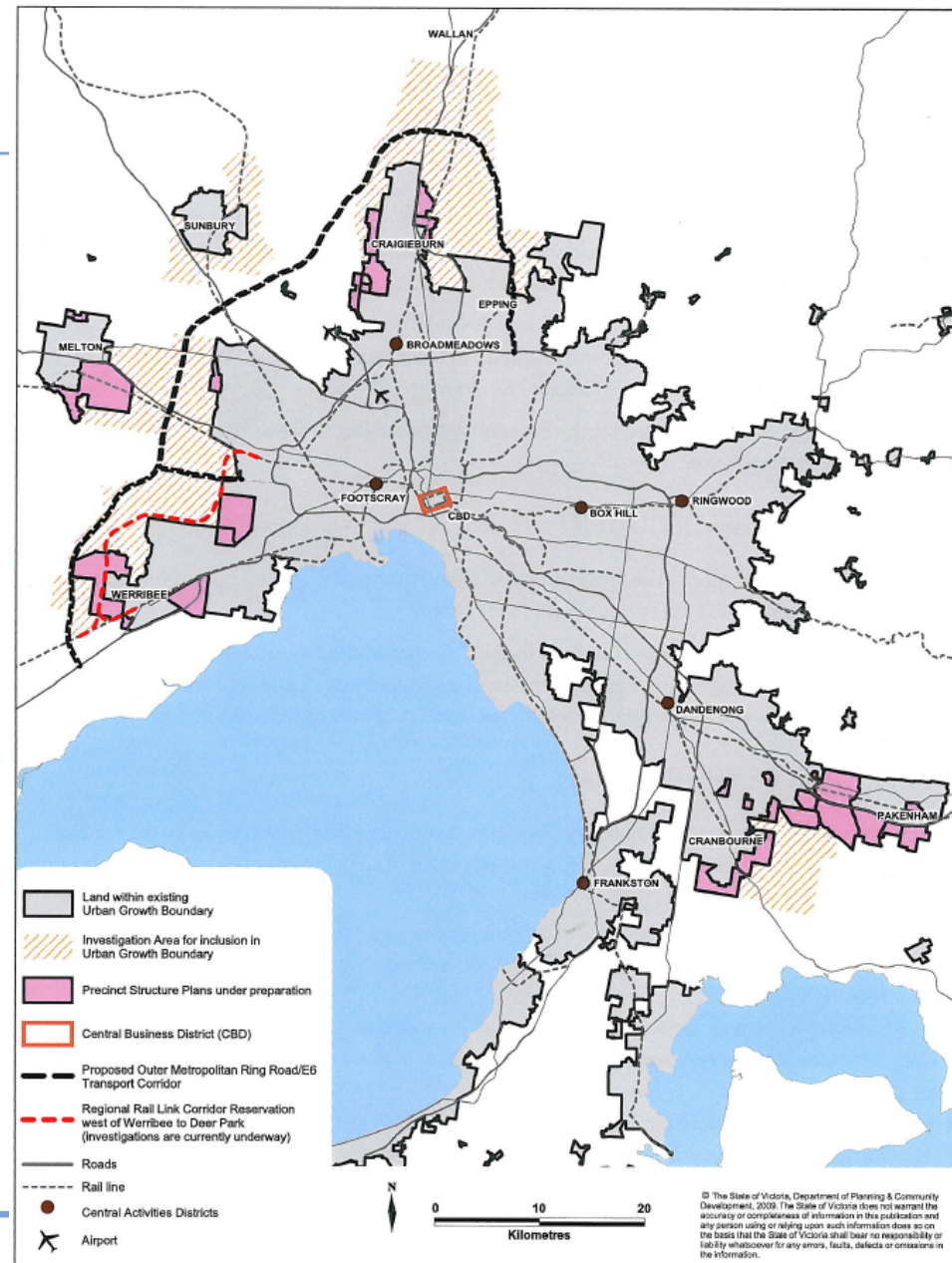




# 2007 – 2010

## Melbourne Urban Growth Boundary

- Strategic assessment which:
  - investigated areas outside current UGB
  - identified precincts within the current UGB
  - agreed outer Melbourne Ring Road corridor
  - agreed regional Rail Link Corridor
- Planning processes answers:
  - avoidance - large scale
  - mitigate - precinct scale
  - offset and management





# 2010 and beyond ... the Hawke Report

The key findings of **Hawke Report** recognise that the Act has many positive features for retaining including:

- clearly identified matters of national environmental significance
- the Environment Minister's role as decision-maker
- the provisions for public participation
- the explicit consideration of social and economic issues
- the statutory advisory mechanisms
- the strong compliance and enforcement regime



# 2010 and beyond ... the Hawke Report

The Report also indicates areas for improvement, making **71 recommendations** for change and **150+ other findings**

The Report recommends **reforms** that:

- promote the sustainability of Australia's **economic development**
- **reduce and simplify** the regulatory burden
- ensure activities under the Act represent the most efficient and effective ways of **achieving** desired environmental outcomes; and
- the activities are based on an **effective federal** arrangement



# 2010 and beyond ... the Hawke Report

The Report recommends the reforms are done through:

- **harmonisation** – Commonwealth, State and Territory regimes and practices should be harmonised where appropriate
- **accreditation** – the Commonwealth should focus on accreditation of State and Territory processes that meet requisite Commonwealth standards
- **standardisation** – the Commonwealth should attempt to create regulatory systems that are uniform across the Commonwealth, States and Territories
- **simplification** – the Commonwealth should streamline Environmental Impact Assessment (EIA) processes; and
- **oversight** – the Commonwealth should be engaged in performance monitoring of accredited systems.



# Final Report - Findings and Recommendations

The **nine core** elements of the Review:

- redraft the Act to better reflect the Australian Government's role, streamline its arrangements and rename it the **Australian Environment Act**;
- establish an independent **Environment Commission** to advise the government on project approvals, strategic assessments, bioregional plans and other statutory decisions;
- **invest in the building blocks** of a better regulatory system such as national environmental accounts, skills development, policy guidance, and acquisition of critical spatial information;
- streamline approvals through **earlier engagement** in planning processes and provide for more effective use and greater reliance on strategic assessments, bioregional planning and approvals bilateral agreements;



# Final Report - Findings and Recommendations

- set up an Environment **Reparation Fund** and national ‘biobanking’ scheme;
- provide for environmental performance **audits and inquiries**;
- create a new matter of national environmental significance for ‘**ecosystems of national significance**’ and introduce an **interim greenhouse trigger**;
- **improve transparency** in decision-making and provide greater access to the courts for public interest litigation; and
- mandate the development of **foresight reports** to help government manage emerging environmental threats.



# 2010 and beyond ... the Hawke Report

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The report proposes a paradigm shift:

- from **reactive regulation** to **proactive management**
- a move from **approving** to **planning**
- an emphasis on **conservation** rather than **protection**
- a focus on **outcomes** over **process**



# What's next?

The Government has advised it will **respond** to the Hawke Report this year

Regardless of the response to the Hawke Report we are looking at how we provide **more guidance**, including through:

- written **policy** guidelines
- continuing to **engaging early** in referrals
- providing advice for **planning frameworks** and instruments
- continuing to implement **strategic approaches**