



COMMONWEALTH OF AUSTRALIA



THE STATE OF WESTERN AUSTRALIA

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BILATERAL AGREEMENT

Bilateral agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) relating to environmental assessment

Commonwealth of Australia
(Commonwealth)

and

The State of Western Australia
(WA)

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Details

Parties

1. The Minister for the Environment for and on behalf of the Commonwealth of Australia (the **Commonwealth**).
2. The Minister for Environment for and on behalf of the State of Western Australia (**WA**).

Background

- A. Under the Intergovernmental Agreement on the Environment 1992 (IGAE) and Council of Australian Governments' Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment 1997, the Parties committed to working together across shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and WA are committed to cooperative efforts to strengthen intergovernmental cooperation on the environment and to minimise costs to business while maintaining high environmental standards.

Objects

- C. The Commonwealth and WA are jointly committed to maintaining high environmental standards and working together to streamline environmental assessment by this agreement, as a step to establishing a 'one-stop-shop' for environmental approvals. This is about setting the highest standards, making swift decisions and delivering certain outcomes.
- D. The parties will work cooperatively so that Australia's high environmental standards are maintained, by ensuring that:
 - a. Australia complies fully with all its international environmental obligations;
 - b. Matters of NES are protected as required under the EPBC Act;
 - c. there are high quality assessments of the impacts of controlled actions on Matters of NES; and
 - d. authorised actions do not have unacceptable or unsustainable impacts on Matters of NES.
- E. This Agreement provides for the accreditation of the WA processes set out in Schedule 1 to enable an integrated and coordinated approach to the assessment of actions requiring approval from both the Commonwealth Minister (under the EPBC Act) and WA.

- F. This Agreement will therefore enable the Commonwealth to rely on the WA assessment processes set out in Schedule 1 for approvals under the EPBC Act. As a step toward establishing a 'one-stop-shop' the parties will work together so that Commonwealth conditions attached to approvals are strictly limited to matters not addressed in WA assessments and approvals.
- G. The parties will use their best endeavours to undertake the commitments in this agreement acting in a spirit of cooperation and consultation to achieve an efficient, timely and effective process for environmental assessments and decisions on whether to approve actions.

Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the same meaning as in the EPBC Act and otherwise the following definitions are used:

| | |
|------------------------------------|---|
| Administrative Arrangements | administrative arrangements made under clause 9.1 of this Agreement. |
| Agreement | this bilateral agreement made under section 45 of the EPBC Act between the Commonwealth and WA, as amended from time to time, and includes its Schedule(s). |
| Assessment Report | for the class of actions described in: <ul style="list-style-type: none">(a) Item 2.1(a) of Schedule 1, the assessment report required to be prepared by Item 3.4 of Schedule 1 and, for the purpose of the Agreement, may include Information accompanying that report; and(b) Items 2.1(b), 2.1(c) and 2.1(d) of Schedule 1, the report prepared by the EPA under section 44 of the EP Act and, for the purpose of the Agreement, may include Information accompanying that report. |
| CEO | the Chief Executive Officer of the WA Agency that administers Part V of the EP Act and includes a delegate of the CEO. |
| Commencement Date | 90 days after the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so. |
| Commonwealth Minister | the Minister administering the EPBC Act and, except in relation to clauses 12, 13 and 14, includes a delegate of the Minister. |
| Department | the Commonwealth Department of the Environment, or any other Commonwealth agency that administers this Agreement from time to time. |
| EP Act | the <i>Environmental Protection Act 1986</i> (WA). |
| EPA | the Environmental Protection Authority continued in existence by section 7(1) of the EP Act. |
| EPBC Act | the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). |
| EPBC Regulations | the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (Cth). |

| | |
|-------------------------------------|--|
| Information | includes data. |
| Law | any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government and includes the common law and rules of equity as in force from time to time. |
| Matter of NES | a matter protected by a provision of Division 1 of Part 3 of the EPBC Act. |
| Previous Bilateral Agreement | the bilateral agreement dated 21 March 2012, and as amended on 16 July 2013, between the Commonwealth and WA relating to environmental impact assessment. |
| Schedule | a schedule to this Agreement. |
| WA Minister | the WA Minister administering the EP Act and includes a delegate of the Minister. |

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference in this Agreement to WA Law is a reference to the relevant Law as in force at the date of this Agreement;
- (g) notes and headings are for convenient explanation or reference only and do not form part of this Agreement or affect the meaning of the provision to which they relate.

1.3 Priority of Agreement documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) the details and provisions of this Agreement;
- (b) a Schedule; then
- (c) Administrative Arrangements made under this Agreement.

2. Nature of this Agreement

- (a) This Agreement is a bilateral agreement made under section 45 of the EPBC Act.
- (b) This Agreement does not create contractual or other legal obligations between the parties, and a breach of this Agreement will not give rise to any cause of action, or right to take legal proceedings, other than as provided for in the EPBC Act.

3. Duration of this Agreement

This Agreement commences on the Commencement Date and continues unless cancelled or suspended in accordance with the EPBC Act.

Note: Section 65(2) of the EPBC Act requires the Commonwealth Minister to cause a review of the operation of this Agreement to be carried out at least once every five years while this Agreement remains in effect.

4. Effect of this Agreement

4.1 Classes of actions not requiring assessment under the EPBC Act

Under subsection 47(1) of the EPBC Act, it is declared that an action does not require assessment under Part 8 of the EPBC Act if the action is in the class of actions specified in Schedule 1 to this Agreement.

4.2 Scope

- (a) Subject to clause 4.3, clause 4.1 applies to actions which occur wholly within WA, including its coastal waters.
- (b) For actions which do not occur wholly within WA, or which are taken in WA but have relevant impacts in other jurisdictions, the parties will consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as that set out in Schedule 1.
- (c) Consistent with section 49 of the EPBC Act, the provisions of this Agreement do not have effect in relation to an action in a Commonwealth area or an action taken by the Commonwealth or a Commonwealth agency.

4.3 Determination that an action is not within a class of action

- (a) The Commonwealth Minister may determine that a particular action is not within a class of actions to which clause 4.1 applies. The Commonwealth Minister will notify the WA Minister of any such determination within 10 business days of making the determination.
- (b) The Commonwealth Minister cannot make a decision under clause 4.3(a) after the WA Minister had given notice under clause 5.3.

4.4 Previous Bilateral Agreement

The Previous Bilateral Agreement is revoked from the Commencement Date.

5. Procedures for referral

5.1 WA to inform proponents or applicants of need to refer under the EPBC Act

WA will use its best endeavours to inform proponents or applicants that an action may need to be referred to the Commonwealth Minister under the EPBC Act and that an accredited assessment process may be available.

5.2 Commonwealth Minister to inform WA Minister about whether an action is a controlled action

The Commonwealth Minister must notify the WA Minister of every action that:

- (a) is proposed to be taken in WA; and
- (b) the Commonwealth Minister determines is a controlled action,

within 10 business days of the Commonwealth Minister deciding that the action is a controlled action.

5.3 Notification by the WA Minister that an accredited process will apply

- (a) Where:
 - (i) the Commonwealth Minister has notified the WA Minister that an action proposed to take place in WA is a controlled action; and
 - (ii) the action does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 to this Agreement,the WA Minister must, as soon as it is practicable after receiving the written notice referred to in clause 5.2, advise the Commonwealth Minister, in writing, whether the action will be assessed in a manner specified in Schedule 1 to this Agreement.
- (b) The WA Minister will not advise the Commonwealth Minister under clause 5.3(a) that the action will be assessed in a manner specified in Schedule 1 unless:
 - (i) the proponent or applicant has applied in an approved form to the EPA or the CEO, as the case requires, for the action to be assessed in a manner specified in Schedule 1 of this Agreement; and
 - (ii) the EPA or the CEO, as the case requires, has determined the action will, in fact, be assessed in a manner specified in Schedule 1 of this Agreement.
- (c) The parties note that the WA Minister may ask the Commonwealth Minister, under section 79 of the EPBC Act, to reconsider the decision that the action is a controlled action.

6. Assessment

6.1 Application of this Clause

Where the WA Minister has advised the Commonwealth Minister that an action will be assessed in a manner specified in Schedule 1 to this Agreement, this clause 6 shall apply in respect of that action.

6.2 Statutory undertaking

(a) Where the action:

- (i) is a controlled action taken or proposed to be taken in WA;
- (ii) does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 of this Agreement; and
- (iii) is an action:
 - (A) taken or proposed to be taken by a constitutional corporation; or
 - (B) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and a Territory, or between two Territories; or
 - (C) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries,

WA undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.

(b) The parties agree that 'greatest extent practicable' in clause 6.2 is satisfied where the assessment has been undertaken in a specified manner of assessment as outlined in Schedule 1.

6.3 Communication with proponents or applicants

Consistent with WA's Lead Agency Framework, the parties agree that, at the commencement of the assessment process, contact personnel will be determined and proponents or applicants will be provided with Information, or otherwise be provided with ready access to Information, about the assessment process that will be followed.

6.4 Single assessment

- (a) In determining the assessment approach for a proposed action, WA will decide on a form of assessment that will allow the Commonwealth Minister to have sufficient Information to make an informed decision whether or not to approve the proposed action and, if so, under what conditions.
- (b) WA may seek advice on relevant matters from Commonwealth agencies with relevant expertise.

6.5 Consistency and predictability

The parties will continue to take steps to improve the efficiency and effectiveness of their own administrative processes to the greatest extent possible.

6.6 Consultation on assessment

To ensure statutory requirements are met, WA will consult with the Commonwealth during the assessment to ensure that relevant impacts on Matters of NES are adequately addressed.

6.7 Notification of final Assessment Report

WA will notify the Commonwealth that the assessment is complete on the date the Assessment Report is finalised and made public and ensure that all relevant material is available to the Commonwealth.

6.8 Additional Information

- (a) If, in deciding whether to approve the taking of a proposed action assessed under this Agreement, the Commonwealth Minister uses any Information described in section 136(2)(e) of the EPBC Act, the Commonwealth Minister undertakes to provide a copy of this Information to WA Minister.
- (b) The Commonwealth Minister agrees to give WA an opportunity to comment on the accuracy of this Information, subject to the requirements of section 130 of the EPBC Act relating to the time period within which the Commonwealth Minister must decide whether to approve the action.

6.9 Relevant guidelines, policies and plans

When undertaking assessments or preparing Assessment Reports on impacts on Matters of NES under this Agreement, WA agrees to have regard to relevant guidelines, policies and plans, including where relevant:

- (a) the Commonwealth EPBC Act Environmental Offsets Policy;
- (b) a recovery plan for a relevant species or community, any approved conservation advice and any threat abatement plan; and
- (c) Information on the relevant impacts of the actions that was given to the Commonwealth Minister under an agreement under Part 10 of the EPBC Act.

6.10 Consultation on relevant guidelines, policies and plans

- (a) Where the Commonwealth is developing or amending a relevant guideline, policy or plan to which clause 6.9 may apply, it will notify WA as early as possible and consult WA prior to finalisation.
- (b) Where the Commonwealth has finalised a new or amended a relevant guideline, policy or plan to which clause 6.9 may apply, it will notify WA.

7. Transparency and access to Information

7.1 Indigenous peoples

- (a) Assessments will recognise the role and interests of Indigenous peoples, as applicable, in promoting conservation and ecologically sustainable use of natural resources and promote the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.

- (b) In recognising that the views of relevant Indigenous people are likely to be a primary source of Information on cultural heritage, WA will have due regard to relevant guidelines that address consultation with Indigenous peoples including, but not limited to, WA's 'Aboriginal Heritage Due Diligence Guidelines' and for assessments specified in Schedule 1 Items 2.1(b) and 2.1(c) and 2.1(d), EPA's guidance regarding the assessment of Aboriginal heritage, as amended from time to time.

7.2 Public access – generally

WA agrees that documentation about each assessment made as specified in Schedule 1 will be available to the public, subject to any appropriate statutory exemptions that would be available if the assessment was undertaken under Part 8 of the EPBC Act by the Commonwealth (including commercial-in-confidence Information and Information that is critical to the protection of a Matter of NES).

7.3 Public access – particular needs groups

- (a) WA will make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to comment on actions assessed in the manner specified in Schedule 1.
- (b) The parties note that Indigenous people affected by a proposed action may have particular communication needs, and will make arrangements to ensure that affected Indigenous people have reasonable opportunity to comment on actions assessed under this Agreement.

8. Conditions

8.1 Conditions attached to an approval

- (a) The parties recognise the desirability of avoiding, to the extent practicable, inconsistent conditions attached to approvals for an action assessed under this Agreement and WA Law.
- (b) To this end, the parties:
 - (i) note the provisions of section 134 of the EPBC Act, which include a requirement for the Commonwealth Minister to consider any relevant WA conditions when deciding whether to attach a condition to an approval;
 - (ii) agree to consult on the conditions relevant to Matters of NES, proposed to be attached to an approval granted by either party; and
 - (iii) agree to inform one another before varying conditions attached to an approval for an action, where the condition relates to, or affects, a matter protected by Part 3 of EPBC Act. The parties also agree to advise one another of any such variation after it has been made.
- (c) To minimise duplication to the extent possible for actions assessed under this Agreement:
 - (i) WA will identify conditions imposed, recommended or likely to be imposed by WA in relation to Matters of NES;

- (ii) the Commonwealth will make its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to be addressed, by state conditions.

8.2 Monitoring compliance with conditions

- (a) Where an action:
 - (i) is taken in WA;
 - (ii) requires the approval of the Commonwealth Minister under Part 9 of the EPBC Act; and
 - (iii) requires approval (however described) under WA Law,the parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication.
- (b) Without limiting clause 8.2(a), the parties agree:
 - (i) that each party will inform the other of any conditions attached to an approval(s) to take an action assessed under this Agreement; and
 - (ii) that, subject to the legal requirements of each party, complementary arrangements will be put in place for monitoring compliance with conditions on any action. The aim of these arrangements is to ensure that reporting and compliance activities, including site inspections are, to the extent practicable, consistent and effective, coordinated and avoid duplication.

8.3 Enforcing conditions on approvals

The parties agree to inform one another, as soon as practicable, of any action to prosecute a person for contravening a condition of an approval for an action assessed under this Agreement, where the condition relates to, or affects, a matter protected by Part 3 of the EPBC Act.

9. Cooperation and governance

9.1 Administrative Arrangements

To ensure that the requirements of this Agreement are administered cooperatively and efficiently, the parties will jointly develop Administrative Arrangements:

- (a) that further detail the roles and responsibilities of each of the parties;
- (b) that streamline the referral process for proponents and applicants;
- (c) which may include guidelines on the exchange of Information for the purpose of clause 9.3 (Exchange of Information);
- (d) which will allow proponents and applicants to simultaneously satisfy both requirements under the EPBC Act and relevant WA Law; and
- (e) that otherwise provide for the implementation of this Agreement.

9.2 Senior officers' committee

- (a) The Administrative Arrangements will detail and provide for the establishment of a senior officers' committee to oversee the implementation of this Agreement.

- (b) The senior officers' committee will meet at least twice every 12 months after the Commencement Date.
- (c) Terms of reference for the senior officers' committee will be set out in the Administrative Arrangements.

9.3 Exchange of Information

- (a) Each party agrees to share Information for the purposes of assessments conducted under this Agreement and to comply promptly with any reasonable request from the other party to supply Information relating to this Agreement.
- (b) Subject to the permission of the owner of the relevant data and the confidentiality requirements of the party providing the data, and any other relevant statutory limitations, the parties agree to make available to each other any appropriate and relevant data for the parties to meet their respective responsibilities relating to this Agreement.
- (c) The parties agree that data will remain the property of the owner and its use will be subject to such licence conditions as may be agreed. The parties agree that data will not be used or communicated to any other person without the permission of the owner.

9.4 Guidance documents

- (a) The parties commit to consult each other and cooperate in the development, maintenance, review, and implementation of guidance documents relating to Matters of NES and the operation of this Agreement.
- (b) For the purposes of this clause 9.4, guidance documents may include:
 - (i) referral/application guidelines in relation to significant impacts on Matters of NES;
 - (ii) guidance documents for species and ecological communities;
 - (iii) other guidelines, policies or plans relating to Matters of NES prepared by the Commonwealth under the EPBC Act that may relate to the operation of this Agreement.

10. Review

10.1 Five year reviews

- (a) A review of the operation and effectiveness of this Agreement must be carried out at least once every five years while this Agreement remains in effect in accordance with section 65 of the EPBC Act.
- (b) Each review of this Agreement under this clause will be carried out jointly by the relevant administrative units of the Commonwealth and WA, at their own cost.
- (c) Each review will include an evaluation of the operation and effectiveness of this Agreement against the objects of this Agreement.
- (d) The Commonwealth Minister must publish the report of each review in accordance with the EPBC Regulations, and give a copy of the report of each review to WA.

10.2 Two year review

A review of the operation and effectiveness of this Agreement may be carried out by WA, or WA and the Commonwealth, within 24 months of the Commencement Date.

11. Audit

11.1 Commonwealth Auditor-General

The parties recognise that, under the *Auditor-General Act 1997* (Cth), the Commonwealth Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this Agreement.

11.2 WA Auditor-General

The parties recognise that, under the *Auditor-General Act 2006* (WA), the Western Australian Auditor-General may audit the operations of the WA public sector in relation to this Agreement.

12. Dispute resolution

12.1 Escalation process

- (a) Acting in a spirit of cooperation, the parties agree that any dispute arising during the course of this Agreement will be dealt with in an expeditious manner, as follows:
- (i) the party claiming that there is a dispute will provide notice to the other party setting out the nature of the dispute;
 - (ii) the parties will seek to resolve the dispute by direct negotiation using their best endeavours;
 - (iii) discussions aimed at resolution will normally take place in the following order, before the exercise of any other rights in, or referred to in, clause 13:
 - (A) at senior officials level, between officers of the senior officers' committee established under clause 9.2;
 - (B) between the Secretary of the Department and the equivalent WA official; and
 - (C) correspondence between the Commonwealth Minister and the WA Minister.
- (b) This clause 12 is subject to the rights and obligations of each party under relevant sections of the EPBC Act (including those sections dealing with cancellation and suspension of bilateral agreements).

12.2 Obligations continue

Despite the existence of a dispute, both parties must continue to perform their respective obligations under this Agreement, unless this Agreement is suspended or cancelled in accordance with the EPBC Act.

13. Suspension or cancellation

13.1 By the Commonwealth Minister

Sections 57 to 64 of the EPBC Act provide that the Commonwealth Minister may cancel or suspend all or part of this Agreement (either generally or in relation to actions in a specified class) under certain circumstances. Sections 57 to 64 of the EPBC Act also set out a process for consulting on the cancellation or suspension of all or part of this Agreement.

13.2 At the request of the WA Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister to cancel or suspend all or part of this Agreement if the WA Minister requests a notice of cancellation or suspension in accordance with this Agreement.
- (b) A request by the WA Minister under section 63 of the EPBC Act to cancel or suspend all or part of this Agreement is made in accordance with this Agreement if:
 - (i) the request is made on the grounds that the WA Minister is not satisfied that the Commonwealth has complied or will comply with this Agreement;
 - (ii) the request is made on the grounds that the WA Minister is not satisfied that the objects of this Agreement are being achieved; or
 - (iii) the request is made on the grounds of an amendment to the EPBC Act, that has a significant effect on the operation of the Agreement; and
before making the request, the WA Minister has informed the Commonwealth Minister in writing of the reasons for requesting the suspension or cancellation and allowed a period of at least 20 business days for the Commonwealth Minister to respond.

14. Amendment

14.1 Continuous improvement

The parties will notify and consult each other on matters that come to their attention that may improve the operation of this Agreement.

14.2 Minor amendments to this Agreement

- (a) The parties note that under section 56A of the EPBC Act the Commonwealth Minister may make a written determination that an intended draft amendment to a bilateral agreement will not have a significant effect on the operation of the bilateral agreement.
- (b) Before making a determination under section 56A of the EPBC Act, the Commonwealth Minister must reach agreement with the appropriate WA Minister on the wording of the amendment.

14.3 Amendment of legislation

If the EPBC Act or any other relevant Law is subsequently amended, or proposed to be amended, in a manner that would affect the operation of this Agreement, the parties agree to promptly notify each other and the parties will seek to agree as soon as practicable on whether it is necessary to draft an amendment to this Agreement or make another bilateral agreement varying or replacing this Agreement.

14.4 Approval Bilateral Agreement

In the event of the development or amendment of an Approval Bilateral Agreement applicable to assessments to which this Agreement also applies, the parties will seek to agree as soon as practicable whether it is necessary to draft an amendment to this Agreement, or make another bilateral agreement varying or replacing this Agreement.

15. Freedom of information

- (a) If a party receives any request, including under freedom of information Laws, for any documents originating from another party which are not otherwise publicly available, the parties will, subject to the requirements of the relevant freedom of information Laws, consult on the release of those documents.
- (b) The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met.

16. General provisions

16.1 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

16.2 Notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication.

16.3 Disclosure of Information

Notwithstanding any other provision of this Agreement:

- (a) The Department and WA may disclose Information about this Agreement required to be reported
- (b) Nothing in this Agreement requires the Commonwealth or WA to breach any legal or equitable obligations of confidence with respect to Information, but this clause does not operate to limit any statutory authority to publish, disclose or deal with Information which may depend, in part or in whole, upon the other provisions of this Agreement.

Schedule 1 – Declared class of actions

1. Preamble

Section 47(1) of the EPBC Act provides that a bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8 of that Act.

Clause 4.1 of this Agreement declares that an action in any of the classes of actions specified in this Schedule does not require assessment under Part 8 of the EPBC Act.

2. Classes of actions to which clause 4.1 applies

2.1 Classes of actions

For the purposes of the declaration in clause 4.1 of this Agreement, the classes of actions are:

- (a) actions that are assessed under Part V Division 2 of the EP Act and in accordance with the requirements of Items 3 and 6 of this Schedule 1. This assessment approach is taken to correspond to assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act;

Note: This Item includes assessments under Part V Division 2 of the EP Act in relation to area permits and purpose permits, and includes permits assessed by the Department of Mines and Petroleum under delegation under the EP Act.

- (b) actions that are assessed as Assessment on Proponent Information category A (**API**) under the:
 - (i) *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012*; or
 - (ii) *Environmental Impact Assessment Administrative Procedures 2010*; as made under section 122 of the EP Act, and in accordance with the requirements of Items 4 and 6 of this Schedule 1. This assessment approach is taken to correspond to assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act;
- (c) actions that are assessed by Public Environmental Review (**PER**) under the:
 - (i) *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012*;
 - (ii) *Environmental Impact Assessment Administrative Procedures 2010*; or
 - (iii) *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002*;as made under section 122 of the EP Act, and in accordance with the requirements of Items 5 and 6 of this Schedule 1. This assessment approach is taken to correspond to assessment by public environment report under Division 5 of Part 8 of the EPBC Act; and

- (d) actions that are assessed by Environmental Review and Management Program (ERMP) under the *Environmental Impact Assessment (Part IV Division 1) Administrative Procedures 2002* as previously made under the EP Act, and in accordance with the requirements of Items 5 and 6 of this Schedule 1. This assessment approach is taken to correspond to assessment by environmental impact statement under Division 6 of Part 8 of the EPBC Act.

2.2 Transitional

- (a) A class of actions described in Items 2.1(c) or 2.1(d) of this Schedule 1 includes actions where:
 - (i) the WA Minister has indicated in a written notice to the Commonwealth Minister under clause 13.2 of the Previous Bilateral Agreement that the action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement; and
 - (ii) the relevant assessment process for that action had not been completed prior to the revocation of the Previous Bilateral Agreement.

2.3 Excluded actions

- (a) A class of actions described in Items 2.1(a) to 2.1(d) of this Schedule 1 does not include actions which have been prescribed under subsection 25(1) of the EPBC Act.
- (b) Subject to Item 2.2 of this Schedule 1, a class of actions described in Item 2.1(a) to 2.1(d) of this Schedule 1 does not include actions which have been determined to be a controlled action pursuant to section 75 of the EPBC Act prior to the Commencement Date.

3. Specified manner of assessment – Item 2.1(a)

3.1 Overview

Any controlled action subject to this bilateral agreement and assessed using the assessment approach described at Item 2.1(a) of this Schedule 1 is subject to the additional requirements in this Item 3 of this Schedule 1.

3.2 Assessment approach must assess relevant impacts

Under section 51E(1)(d) of the EP Act the CEO requires the application for the clearing permit be supported by Information including:

- (a) a document that describes:
 - (i) the proposed action;
 - (ii) its likely relevant impacts;
 - (iii) to the extent practicable, any feasible alternatives to the proposed action; and
 - (iv) possible mitigation measures; and
- (b) an assessment of the relevant impacts of the clearing.

3.3 Public comment

- (a) The application for the clearing permit submitted under section 51E of the EP Act must be advertised for public comment for at least 14 days under section 51E(4) of the EP Act.
- (b) When the public is invited to comment under Item 3.3(a) of this Schedule 1, the invitation must:
 - (i) be published in accordance with the requirements of either Items 7.02 or 7.03 of Schedule 1 of the EPBC Regulations; and
 - (ii) include the matters specified in Item 7.04 of Schedule 1 of the EPBC Regulations.
- (c) Prior to the finalising of the Assessment Report under Item 3.4 of this Schedule 1, the applicant must:
 - (i) be provided with submissions made by the public during the period that the application for the clearing permit is released for public comments; and
 - (ii) have prepared and submitted to the CEO a written response which summarises or takes into account the issues raised by the public in those submissions.

3.4 Assessment Report

An assessment report must be prepared by the CEO for each action that is assessed, which takes into account:

- (a) the Information in the application submitted under section 51E of the EP Act;
- (b) the written response submitted to the CEO under Item 3.3(c)(ii) of this Schedule 1; and
- (c) any other relevant Information available to the CEO.

4. Specified manner of assessment – Item 2.1(b)

4.1 Overview

Any controlled action subject to this bilateral agreement and assessed using the assessment approach described at Item 2.1(b) of this Schedule 1 is subject to the additional requirements in this Item 4 of this Schedule 1.

4.2 Assessment approach must assess relevant impacts

The EPA requires the proponent's assessment documentation to include:

- (a) an assessment of the relevant impacts;
- (b) a written response to any submissions received in response to the invitation for public comment referred to in Item 4.3 of this Schedule 1.

4.3 Public comment

- (a) Draft assessment documentation that describes:
 - (i) the proposed action;
 - (ii) the likely relevant impacts;

- (iii) to the extent practicable, any feasible alternatives to the proposed action; and
 - (iv) possible mitigation measures,
- must be released by the proponent for public comment for at least 14 days prior to the referral of the action to the EPA or otherwise at some time prior to the finalisation of the Assessment Report.
- (b) When the public is invited to comment under Item 4.3(a) of this Schedule 1, the invitation must:
 - (i) be published in accordance with the requirements of item 7.02 or item 7.03 of Schedule 1 of the EPBC Regulations; and
 - (ii) include the matters specified in Item 7.04 of Schedule 1 of the EPBC Regulations.
 - (c) The proponent:
 - (i) will receive submissions made by the public during the period that the draft assessment documentation is released for public comment; and
 - (ii) must prepare a written response for inclusion in the assessment documentation submitted to the EPA at the time of the referral or sometime after the referral but prior to the finalisation of the Assessment Report, which summarises or takes into account the issues raised by the public in those submissions.

4.4 Assessment Report

The Assessment Report must take into account:

- (a) the Information in the assessment documentation; and
- (b) any other relevant Information available to the EPA.

5. Specified manner of assessment – Items 2.1(c) and 2.1(d)

5.1 Overview

Any controlled action subject to this bilateral agreement and assessed using the assessment approach described at Item 2.1(c) or 2.1(d) of this Schedule 1 is subject to the additional requirements in this Item 5 of this Schedule 1.

5.2 Guidelines for assessment

- (a) The EPA will prepare written guidelines to ensure that the assessment:
 - (i) assesses all relevant impacts that the action has, will have or is likely to have;
 - (ii) contains enough Information about the action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the action under the EPBC Act; and

- (iii) if a PER is being prepared, addresses the matters prescribed in regulations for the purposes of section 97(2)(b) of the EPBC Act relating to the preparation of guidelines for a draft public environment report under that Act; and
 - (iv) if an ERMP is being prepared, addresses the matters prescribed in regulations for the purposes of section 102(2)(b) of the EPBC Act relating to the preparation of guidelines for a draft environmental impact statement under that Act.
- (b) If the proposed action is assessed using a PER or an ERMP, the EPA publishes draft guidelines and seeks public comment on the draft guidelines before they are finalised if, at the time the guidelines are being prepared:
- (i) the EPA believes the issues to be addressed in the assessment will be complex or there will be a high level of public interest in the issues;
 - (ii) the Commonwealth Minister has requested the publication of draft guidelines; or
 - (iii) the EPA considers that for any other reason it is appropriate to do so.
- (c) The assessment documentation for a PER or an ERMP made available to the public must adequately address the guidelines for the assessment.

5.3 Setting the public review period

The public review period for a PER and an ERMP is at least 20 business days or 28 days (specified under the EPBC Act), whichever is longer.

5.4 Inviting public comment

- (a) When the public is invited to comment during the public review period for a PER or an ERMP, the invitation is published in newspapers circulating generally in each State and Territory.
- (b) When the public is invited to comment on the draft guidelines for a PER or an ERMP, as set out in item 5.2(b) of this Schedule, the invitation is published in newspapers circulating generally in each State and Territory.
- (c) The advertisement includes: the name of the action, a brief description of the action, its location(s), what matters are protected by a provision of Part 3 of the EPBC Act, the name of the person proposing to take the action, the name of the designated proponent (if not the person intending to take the action), and how the relevant documents may be obtained and the deadline for public comments.

5.5 Responding to public submissions

If a PER or an ERMP is prepared, the proponent prepares for the purposes of section 40(6)(b) of the EP Act a revised PER or an ERMP or the supplement to the PER or ERMP (as the case may be), taking into account the public submissions (if any) relating to the relevant impacts of the action which are received during the public review period. The revised PER or ERMP or the supplement to the PER or ERMP (as the case may be), is submitted to the EPA.

5.6 Assessment reports

- (a) The EPA prepares an Assessment Report on the proposed action and forwards it to the WA Minister, who will forward it to the Commonwealth Minister.
- (b) The Assessment Report takes into account:
 - (i) the PER or the ERMP (as the case may be); and
 - (ii) any comments provided by the public during the public review period; and
 - (iii) Information provided by the proponent under item 5.5 of this Schedule 1; and
 - (iv) any other relevant Information available to the EPA.

6. Single Assessment

6.1 Overview

Any controlled action subject to this bilateral agreement and assessed using an assessment approach described at Items 2.1(a), 2.1(b), 2.1(c) or 2.1(d) of this Schedule 1 must also be subject to the additional requirements in this Item 6 of this Schedule 1.

6.2 Single Assessment

To ensure that a single WA assessment can be relied on by the Commonwealth Minister for a decision under Part 9 of the EPBC Act, WA will ensure that the Assessment Report includes:

- (a) a description of:
 - (i) the action;
 - (ii) the places affected by the action;
 - (iii) any Matters of NES that are likely to be affected by the action;
- (b) a summary of the relevant impacts of the action. This means that the nature and extent of likely impacts must be explicitly assessed for each Matter of NES specified in the controlled action decision which may be:
 - (i) the World Heritage values of a World Heritage property;
 - (ii) the National Heritage values of a National Heritage place;
 - (iii) the ecological character of a Ramsar wetland;
 - (iv) listed threatened species (except a conservation dependent species) or their habitat, or any threatened ecological communities;
 - (v) the members of a listed migratory species or their habitat;
 - (vi) a water resource, in relation to coal seam gas or large coal mining proposals;
 - (vii) part of the Commonwealth marine area (for actions outside the Commonwealth marine area that may impact the environment in the Commonwealth marine area);

- (viii) Commonwealth land (for actions outside Commonwealth land that may impact on the environment on Commonwealth land); and
- (ix) the environment in the case of nuclear actions;
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on each relevant Matter of NES proposed by the proponent or suggested in public submissions;
- (d) to the extent practicable, a description of any feasible alternatives to the action that have been identified through the assessment process, and their likely impact on each Matter of NES;
- (e) a statement of recommended conditions for approval of the action that may be imposed to address identified impacts on Matters of NES, including consideration of any offsets; and
- (f) a statement of WA approval requirements and conditions that apply, or are proposed to apply, to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action.

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of the
Commonwealth of Australia by:

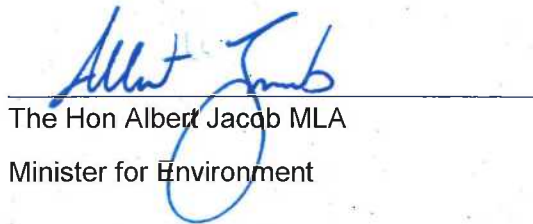


The Hon Greg Hunt MP
Minister for the Environment

8.9.2014

Date

SIGNED for and on behalf of the State of
Western Australia by:



The Hon Albert Jacob MLA
Minister for Environment

3/10/2014

Date