



COMMONWEALTH OF AUSTRALIA

STATEMENT OF REASONS

**Agreement between the Commonwealth of Australia
and the State of South Australia under section 45 of the
Environment Protection and Biodiversity Conservation Act 1999 (C'th)
relating to environmental assessment**

I, Murray Watt, Minister for the Environment, provide the following reasons for my decision to enter into a bilateral agreement (**Agreement**) with the State of South Australia under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

Background

Development of a new bilateral agreement

1. On 25 September 2014, the then Minister for Environment the Hon Greg Hunt MP, on behalf of the Commonwealth, entered into an assessment bilateral agreement with the State of South Australia (**2014 Agreement**). The 2014 Agreement accredited specified South Australian statutory environmental assessment processes under national environmental law, to create a single assessment process that satisfies both the South Australia and Commonwealth requirements.
2. The 2014 Agreement covered actions under both the *Mining Act 1971* (SA) and the *Development Act 1993* (SA).
3. In 2021, the 2014 Agreement ceased to cover actions assessed under the *Mining Act 1971* (SA) (**Mining Act**) and the *Development Act 1993* (SA) due to:
 - a. amendments made to the *Mining Act 1971* (SA),
 - b. the repeal of the *Mining Regulations 2011* (SA),
 - c. the commencement of the *Mining Regulations 2020* (SA),
 - d. the repeal of the *Development Act 1993* (SA), and

- e. the commencement of the *Planning, Development and Infrastructure Act 2016* (SA) (**PDI Act**).
- 4. On 5 April 2023, the then Minister for Environment and Water, the Hon Tanya Plibersek MP (**Former Minister**) signed a notice of intention to develop a draft assessment bilateral agreement with the State of South Australia, to replace the 2014 Agreement (**Notice of Intention**). In accordance with section 45(3) of the EPBC Act, the Notice of Intention was published.
- 5. A draft assessment bilateral agreement between the Commonwealth and South Australian Governments (**SA Government**) has been developed to provide for accreditation of processes under the current South Australian mining and planning legislation (set out above), so that where proposed actions are assessed under those processes and in accordance with the Agreement, the proposed actions will not need to be separately assessed by the Commonwealth Government under the EPBC Act.

Consultation on the Agreement

- 6. On 4 July 2024, the Former Minister agreed to release the Agreement for public comment.
- 7. On 29 July 2024, a draft of the Agreement was published with an invitation for any person to give the Minister comments on the draft. As required by section 49A of the EPBC Act and regulation 16.02 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), the draft Agreement and invitation for comments was published:
 - a. on the department's website,
 - b. in the Gazette, and
 - c. in The Advertiser newspaper.
- 8. The invitation initially stipulated that comments were to be provided by 2 September 2024 via the department's Have Your Say webpage.
- 9. On 28 August 2024, the consultation period was extended to 30 September 2024, due to a technical error with the Have Your Say webpage. This extended length of time satisfied the specified period of 28 days set out in section 49A(a)(ii) of the EPBC Act.
- 10. I understand that the department also emailed key stakeholders on 29 July 2024 to advise that the Agreement was available for public comment with follow up emails sent on 28 August 2024 to notify of the extension.
- 11. The department received nine submissions within the statutory consultation period.
- 12. In summary, the submissions raised concerns in relation to matters including:
 - a. specific suggestions regarding the text or content of the Agreement;
 - b. comments on the timing and collaboration between state government departments and the Commonwealth;

- c. comments on the assessment processes contained in the Schedule of the Agreement; and
 - d. the scope of the Agreement.
13. These submissions were taken into account by the department in the drafting of the final assessment bilateral agreement. I also took into account those submissions, and the department's report on the submissions in making my decision to enter into the Agreement, as is required by section 49A(b) of the EPBC Act.
 14. The report on the department's response to comments, will be published on the department's website, in accordance with section 45(4) of the EPBC Act.
 15. The department undertook an analysis of the nine public comments to determine whether any changes to the Agreement were required. Three minor amendments were made to the Agreement based on the nine public comments, summarised as follows:
 - a. Object F of the Agreement, concerning conditions attached to a Commonwealth approval, was updated to ensure adequate consultation to ensure consistency between state and commonwealth approvals. Specifically, *"the parties will consult on the conditions proposed to be attached to an approval granted by either party and use their best endeavours to ensure that conditions related to Matters of NES are consistent."*
 - b. Clause 5.5(b)(ii) was revised to articulate clearer procedures in the event an assessment approach was changed.
 - c. Clause 7.2 (d)(i) changed from 'take all reasonable steps to obtain the views of any group of Indigenous peoples...' to (i) 'take all reasonable steps to obtain the views of Indigenous peoples...'.
 16. I understand that the department has engaged extensively with the South Australian Government (SA Government) since January 2023, including by sharing draft versions of the Agreement. Following further consultation with the SA Government, minor amendments were made to the draft Agreement, summarised as follows:
 - a. amendment to the commencement date definition;
 - b. insertion of an Implementation Instruments definition; and
 - c. amendments to Items 2.1(b)(ii) and 2(b)(iii) of Schedule 1 to ensure clarity on what classes of action in the PDI Act were included in the Agreement.
 17. Given that these were clarificatory changes, I do not consider that the Agreement should undergo additional public consultation.
 18. As required by section 49A(c) of the EPBC Act, I considered the role and interests of Indigenous people in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement. This takes into account Australia's commitments under the *Convention on Biological Diversity 1993* (the **Biodiversity Convention**).

19. Article 14 of the Biodiversity Convention requires appropriate public participation in environmental impact assessment procedures. Article 8(j) of the Biodiversity Convention also imposes an obligation, as far as possible and as appropriate, to respect, preserve and maintain the knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and to promote wider application of such knowledge, innovations and practices.
20. The Agreement includes recognition of the role and interests of Indigenous peoples at Clause 7.2. Clause 7.2 expressly recognises the role and interest of Indigenous people in promoting the conservation and ecologically sustainable use of natural resources and provides a process for seeking comment from Indigenous people on actions assessed under the Agreement. Clause 7.4 requires special arrangements to be made to ensure groups with particular communication needs have adequate opportunities to comment on assessment documentation.

The effect of the Agreement

21. The Agreement provides for the accreditation of South Australian environmental assessment processes under the PDI Act and Mining Act to ensure an integrated and coordinated approach for assessment of actions requiring approval from both the Commonwealth Environment Minister and the State of South Australia.
22. The Agreement minimises duplication of environmental assessment processes, provides more efficient and effective environmental assessment processes, strengthens intergovernmental cooperation and promotes a partnership approach to environmental protection and biodiversity conservation.
23. As provided for in section 47(1) of the EPBC Act, a bilateral agreement may declare that actions in a class of actions that have been assessed in a specified manner need not be assessed under Part 8 of the EPBC Act. Clause 4.1 of the Agreement contains a declaration that the classes of action specified in Schedule 1 to the Agreement do not require assessment under the EPBC Act.
24. Item 2 in Schedule 1 to the Agreement specifies the classes of actions according to South Australian law under which the assessment of each class of action is carried out. These classes are as follows:

Classes of action under the Planning, Development and Infrastructure Act 2016 (SA)

(b) Where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1:

- (i) actions that are assessed under Division 2 of Part 7 of the Planning, Development and Infrastructure Act 2016 (SA), to which section 111 of that Act applies, or where the SA Minister has directed that an EIS be prepared under either section 130(25) or 131(25) of that Act;*
- (ii) actions that are assessed under section 130 of the Planning, Development and Infrastructure Act 2016 (SA) and require public advertisement under section 130(12) of that Act, other than where the SA Minister has directed that an EIS be prepared under section 130(25) of that Act in which case Item 2.1(b)(i) of this Schedule 1 applies; and*

- (iii) *actions that are assessed under section 131 of the Planning, Development and Infrastructure Act 2016 (SA) and require public notice under section 131(13) of that Act, other than where the SA Minister directs that an EIS be prepared under section 131(25) of that Act in which case Item 2.1(b)(i) of this Schedule 1 applies).*
- (c) *The assessment approach in Item 2.1(b)(i) of this Schedule 1 is taken to correspond to assessment by environmental impact statement under Division 6 of Part 8 of the EPBC Act. The assessment approaches in Items 2.1(b)(ii) and 2.1(b)(iii) of this Schedule 1 are taken to correspond to assessment by preliminary documentation under Division 4 of Part 8 of the EPBC Act.*

Classes of action under the Mining Act 1971 (SA)

- (d) *Where the assessment has been undertaken in accordance with the requirements of Item 4 of this Schedule 1:*
 - (i) *actions that are assessed as an application for a program for environment protection and rehabilitation for an exploration licence under Part 10A of the Mining Act 1971 (SA);*
 - (ii) *actions that are assessed as an application for a mining lease under Part 6 of the Mining Act 1971 (SA);*
 - (iii) *actions that are assessed as an application for a retention lease under Part 7 of the Mining Act 1971 (SA);*
 - (iv) *actions that are assessed as an application for a miscellaneous purposes licence under Part 8 of the Mining Act 1971 (SA);*
 - (v) *actions that are assessed as an application for a change in operations under Division 7 of Part 8B of the Mining Act 1971 (SA); and*
 - (vi) *actions that are assessed as a special mining enterprise under Part 8A of the Mining Act 1971 (SA).*
- (e) *Each of the assessment approaches described in Items 2.1(d) above are taken to correspond to assessment by environmental impact statement under Division 6 of Part 8 of the EPBC Act.*

25. Clause 6.3(a) of the Agreement provides that in determining the assessment approach for a proposed action, South Australia will decide on a form of assessment that will allow the Commonwealth Minister to have sufficient information to make an informed decision on whether to approve the action and, if so, under what conditions.
26. Where South Australia opts for a process equivalent to the processes in Divisions 5 and 6 of Part 8 of the EPBC Act (environmental impact statement or public environment report) – that is, the processes under Division 2 of Part 7 of the *Planning, Development and Infrastructure Act 2016 (SA)* - Item 3.2 in Schedule 1 requires the guidelines for the statement or report to be designed to ensure that the relevant assessment documentation provides enough information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the controlled action under the EPBC Act.
27. Clause 6.5 of the Agreement provides that where an action is assessed in a manner specified in Schedule 1, South Australia must provide a copy of the draft assessment

report (or the relevant part which addresses impacts on matters of national environmental significance) to the Commonwealth Minister for comment before finalising it for the purposes of the relevant assessment process, and both parties will endeavour, to the greatest extent possible, to agree on a proposed set of common conditions.

28. Clause 6.6(a) of the Agreement requires the SA Government to provide a copy of the final assessment report, or relevant part, together with the assessment documentation and any other relevant information on which the assessment report is based to the Commonwealth Minister and any further information sought by the State decision maker on Matters of NES. South Australia may, when it delivers the assessment report to the Commonwealth Minister, provide other information on social, cultural and economic matters that is relevant to the Commonwealth Minister's decision to approve the action under the EPBC Act (clause 6.6(b)).
29. Section 48(1) of the EPBC Act provides a list of additional provisions that a bilateral agreement may include. The Agreement includes some additional provisions that are provided for in section 48(1). These include:
- a. clause 6.4 of the Agreement, which relates to additional steps to improve the efficiency of administrative processes (as provided for in section 48(1)(b) of the EPBC Act in connection with the objects at section 44(c) and (d));
 - b. clause 6.5 of the Agreement, which relates to consultation with the Commonwealth on draft Assessment Reports (as provided for in section 48(1)(b) of the EPBC Act – in connection with the object at section 44(c));
 - c. clause 8.1(c) of the Agreement, which relates to minimising duplication of conditions to the extent possible for actions assessed under this Agreement (as provided for in section 48(1)(b) of the EPBC Act in connection with the object at section 44(d)); and
 - d. clause 9.3 of the Agreement, which relates to the exchange of information between parties (as provided for in section 48(1)(c) of the EPBC Act).
30. The Agreement includes clauses that promotes the cooperative use of First Nations people's knowledge and provides for First Nations people to be consulted in an appropriate and sensitive manner (refer to clause 7.2 of the Agreement).

Evidence or other material on which my decision was based

31. The evidence or other material on which I based my decision to enter into the Agreement with South Australia includes the decision brief prepared by my department in relation to the Agreement. Among other matters, the brief included:
- a. an analysis of the requirements for entering into a bilateral agreement, that are specified in the EPBC Act;
 - b. an analysis of the requirements for entering into a bilateral agreement, that are specified in the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth) (**EPBC Regulations 2025**);

- c. the public comments that were received in response to the invitation to comment on the draft Agreement; and a report on the public comments received, which will be published for the purpose of section 45(4)(c) of the EPBC Act, including recommendations on how the comments should be taken into account;
- d. a list of recovery plans and threat abatement plans currently in operation for threatened species and ecological communities in South Australia;
- e. a list of the relevant international conventions referenced in Subdivision B, of Division 2 of Part 5, of the EPBC Act;
- f. all the approved conservation advice, within the meaning of section 266B of the EPBC Act, for the listed threatened species and ecological communities that are relevant to actions that may be taken in South Australia; and
- g. The measures within the Agreement that contribute to the goal of greater regulatory efficiency.

Findings in relation to the statutory requirements for the decision

Statutory requirements for the decision

- 32. Under section 47(2) of the EPBC Act, I must be satisfied that assessment of an action in the specified manner will include assessment of the impact the action has or will have, or is likely to have, on each matter protected by a provision of Part 3.
- 33. The department has undertaken a thorough analysis of the South Australian legislation accredited by the Agreement against the requirements of the EPBC Act and the *EPBC Regulations 2025*.
- 34. For each class of actions, the analysis confirmed that the relevant South Australian process, in conjunction with the specified manner of assessment set out in Items 3 and 4 in Schedule 1 to the Agreement, met these requirements.
- 35. I considered this analysis and agree with the Department's conclusions that assessment of an action in a specified manner will include assessment of the impacts the action has or will have; or is likely to have on each matter protected by a Provision of Part 3 and the Agreement will ensure that, where an action is likely to have a significant impact on matters protected by Part 3 of the EPBC Act, there will be proper assessment and consideration of those impacts before a decision is made by me or my delegate as to whether or not to approve the action.
- 36. I was satisfied that the manners of assessment specified in Schedule 1 to the Agreement in conjunction with the additional requirements in the Agreement, meet the requirement under section 47(2) of the EPBC Act, and will ensure that, where an action is likely to have a significant impact on protected matters, there will be proper assessment and consideration of those impacts before a decision is made by me or my delegate as to whether or not to approve the action.

37. I was therefore satisfied that the Agreement provides that assessment of an action in the specified manner would include assessment of the impacts that the action has, will have, or is likely to have, on each matter protected by a provision of Part 3 as required by section 47(2) of the EPBC Act.

Minister may only enter into agreement if prescribed criteria are met (section 50 of the EPBC Act)

38. Section 50(a) of the EPBC Act requires me to be satisfied that a bilateral agreement accords with the objects of the EPBC Act as set out in section 3(1). The Agreement outlines how the Commonwealth and South Australia will maintain their commitment to high environmental standards, while making swift decisions and delivering certain outcomes. This supports the achievement of the object at section 3(1)(d) of the EPBC Act, which is to promote a co-operative approach to the protection and management of the environment, while maintaining protection of the environment (object at section 3(1)(a) of the EPBC Act).
39. Objects C and D of the Agreement outline the commitment of the parties to work cooperatively so that Australia's high environmental standards are maintained, by ensuring to:
- a. protect the environment;
 - b. promote the conservation and ecologically sustainable use of natural resources;
 - c. ensure an efficient, timely and effective process for environmental assessment and approval of actions;
 - d. ensure that authorised actions do not have unacceptable or unsustainable impacts on Matters of NES; and
 - e. minimise duplication in the environmental assessment and approval processes of the Commonwealth and SA.
40. Paragraphs (a) – (e) above give effect to the object at section 3(1)(a) of the EPBC Act, which is to provide for the protection of the environment, especially those aspects of the environment that are matters of NES.
41. Further, Item 3.2(c) in Schedule 1 specifies that the State Planning Commission must have regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister before deciding whether to seek public comments on the guidelines for assessment.
42. I also note that:
- a. Clause 6 of the Agreement provides for adequate assessment of likely impacts on matters of NES by an accredited process outlined in Schedule 1. This promotes a cooperative approach to the protection and management of matters of NES (object at section 3(1)(d) of the EPBC Act) and is consistent with the protection of matters of NES (object at section 3(1)(a) of the EPBC Act);

- b. the Agreement facilitates a co-operative approach to environmental assessments by ensuring that state environmental assessment processes may be used for the purpose of decisions on whether to approve actions under Part 9 of the Commonwealth EPBC Act, and through undertakings for administrative cooperation between the parties (object at section 3(1)(d)); and
 - c. clause 7.2 of the new Agreement notes specifically the roles and interests of Indigenous peoples in promoting conservation and ecologically sustainable use of natural resources.
43. I was therefore satisfied that the Agreement accords with the objects of the EPBC Act.
44. Section 50(b) of the EPBC Act requires a bilateral agreement to meet the requirements (if any) prescribed by the EPBC Regulations 2025. The EPBC Regulations 2025 set out requirements for assessment bilateral agreements in Part 3 (bilateral agreements) and Schedule 1 (Classes of actions not needing assessment).
45. Regulation 3.02 of the EPBC Regulations 2025 provides that a bilateral agreement must identify each assessment approach used in the manner of assessment specified in the agreement, and state that the assessment approach corresponds to a particular approach in either Division 4, 5, 6 or 7 of Part 8 of the EPBC Act. I considered that Item 2 in Schedule 1 of the Agreement met the requirements of regulation 3.02.
46. A bilateral agreement must provide that documentation about each assessment made under a manner of assessment specified in the agreement must be made available to the public (regulation 3.03(a) of the EPBC Regulations 2025). However, the bilateral agreement can also provide for the restriction of access to documentation if such restrictions mirror those that would be available under Part 8 of the EPBC Act (regulation 3.03(b) of the EPBC Regulations 2025). I found that clause 7.3 of the Agreement met the requirements of regulation 3.03.
47. A bilateral agreement must provide that special arrangements should be made, if appropriate, to ensure that affected groups with particular communication needs have an adequate opportunity to comment on actions assessed under the agreement (regulation 3.04 of the EPBC Regulations 2025). I considered that clause 7.4 of the Agreement met the requirements of regulation 3.04.
48. Regulation 3.06 of the EPBC Regulations 2025 provides that a bilateral agreement can only make a declaration in accordance with subsection 47(1) of the EPBC Act if the specified manner of assessment meets the criteria mentioned in Schedule 1 of the EPBC Regulations 2025. I considered an analysis of the South Australian legislation, accredited by the Agreement, against the relevant requirements in Schedule 1 of the EPBC Regulations 2025. For each class of actions, the analysis confirmed that the relevant South Australian process, in conjunction with the specified manner of assessment set out in Schedule 1 to the Agreement, met these requirements.
49. For the reasons set out in paragraphs 44 to 48 of this document, I found that the Agreement met the requirements of the EPBC Regulations 2025.

Agreements relating to relevant international agreements, management

principles etc (sections 51-54 of the EPBC Act)

50. Sections 51 – 54 (inclusive) of the EPBC Act relate to international agreements, promotion of related management principles and objectives (as well as the National Heritage management principles), and consideration of key documents related to listed threatened species and threatened ecological communities and listed migratory species.
51. The sections apply where the bilateral agreement contains a provision relating to:
- a. a declared World Heritage property (s 51);
 - b. a National Heritage place (s 51A);
 - c. a declared Ramsar wetland (s 52);
 - d. a listed threatened species or a listed threatened ecological community (s 53);
 - e. a listed migratory species (s 54).
52. Sections 51 – 54 (inclusive) require that if the bilateral agreement contains such a provision, then to enter into the bilateral agreement the Minister must be satisfied that:
- a. the provision is **not inconsistent with Australia's obligations** under the relevant international convention or agreement (being, as applicable: the World Heritage Convention, the National Heritage management principles, the Ramsar Convention, the Biodiversity Convention, the Apia Convention, CITES, the Bonn Convention, CAMBA, JAMBA or ROKAMBA); and
 - b. the agreement **will promote the management, protection, survival or conservation** of the relevant World Heritage property, National Heritage place, Ramsar wetland, listed threatened species or ecological community, or listed migratory species; and
 - c. the provision meets any requirements prescribed by the regulations; and
 - d. for threatened species and ecological communities under s 53, the Minister is further satisfied that the provisions are **not inconsistent with any relevant recovery plan or threat abatement plan**, and has **had regard to any approved conservation advice** for the species or community.
53. The Agreement doesn't contain specific provisions on particular properties or listings. However, I nevertheless have considered sections 51 – 54 (inclusive) because the Agreement accredits processes that relate to the assessment of impacts of actions on matters of NES that include: World Heritage properties; National Heritage places; declared Ramsar wetlands; listed threatened species and threatened ecological communities or their habitat; listed migratory species or their habitat; a water resource in relation to coal seam gas or large coal mining developments; and the environment in relation to actions occurring on state land or within state waters that impact on Commonwealth land or the Commonwealth marine area, and nuclear actions.
54. I consider that the requirements in sections 51 – 54 (inclusive) are met.
55. The Agreement will ensure that, where an action is likely to have a significant impact on a matter of NES, there will be proper assessment and consideration of those impacts before

a decision is made by the Minister whether or not to approve the action in accordance with the requirements of Part 9 of the EPBC Act. The thoroughness of the assessment under the relevant South Australian processes has been considered in accordance with the EPBC Regulations 2025, as discussed above.

56. In addition, pursuant to clause 6.8 of the Agreement, South Australia has committed in the Agreement to take the following into account when preparing assessment reports on relevant impacts under the Agreement:

- a. the Commonwealth EPBC Act Environmental Offsets Policy; (where offsets under SA legislation are considered by either party not to fully address Commonwealth EPBC Act environmental offset policy requirements, the parties will consult on the offsets which may be recommended in the assessment report. Where additional offsets are identified as necessary to meet Commonwealth requirements they will be separately identified in the report;
- b. a recovery plan for any relevant listed threatened species or ecological community, any approved conservation advice and any threat abatement plan;
- c. information on the relevant impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Commonwealth Minister under an agreement under Part 10 of the EPBC Act (about strategic assessments);
- d. any management plan for a World Heritage property, a National Heritage place, or a Ramsar wetland property; and
- e. any relevant wildlife conservation plan for a listed migratory species.

57. When I or my delegate makes the decision, there is a requirement to take into account the assessment report (under s 136(2)(b) of the EPBC Act). When making the decision and what conditions to attach, the EPBC Act separately requires that I or my delegate must not act inconsistently with relevant world heritage and national management plans (ss 137 and 137A), the Ramsar Convention (s 138) and recovery plans (s 139) or the conventions and agreements relevant to migratory species (s 140).

58. I have also considered the recovery plans and threat abatement plans for those listed threatened species and threatened ecological communities to which a provision of the Agreement relates – namely, the listed threatened species and ecological communities endemic to, or known to be located in South Australia. Recovery plans provide for research and management actions necessary to stop the decline of, and support the recovery of, a listed threatened species or threatened ecological community. Threat abatement plans provide for research, management and other actions necessary to reduce a key threatening process to an acceptable level. Having reviewed these plans, I am satisfied that the provisions of the Agreement are not inconsistent with these plans.

59. I have had regard to the approved conservation advice in place for the listed threatened species and threatened ecological communities to which a provision of the Agreement relates. These advice contain:

- a. information about what could appropriately be done to stop the decline of, or support the recovery of, a listed threatened species or threatened ecological community; or
- b. a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, a listed threatened species or threatened ecological community.

60. Taking into account the matters discussed above, I was therefore satisfied that:

- a. the provisions of the Agreement which relate to declared World Heritage properties, declared Ramsar wetlands, listed threatened species and ecological communities and listed migratory species are not inconsistent with Australia's obligations under the relevant international agreements, and that the Agreement promotes the management of World Heritage properties, National Heritage place and Ramsar wetlands in accordance with the applicable management principles;
- b. the Agreement will promote the survival and protection and/or enhance the conservation status of each listed threatened species, listed migratory species or listed threatened ecological community to which a provision of the Agreement relates;
- c. the provisions of the Agreement which relate to listed threatened species and ecological communities are not inconsistent with any applicable recovery plan, or a threat abatement plan; and
- d. the assessment processes under Schedule 1 of the Agreement are consistent with the measures contained in approved conservation advice.

Discretionary considerations

61. The Australian Government is committed to reducing the regulatory burden on business by streamlining the environmental approvals process. To deliver on this commitment the Australian Government is working with state and territory governments to maintain bilateral agreements in relation to environmental assessments, accrediting state planning systems under national environmental law. This ensures a single assessment process that satisfies both state and Commonwealth requirements. The Government is committed to having assessment bilateral agreements implemented in all willing states and territories.
62. In light of my findings set out above, I found that the Agreement would remove duplication of environmental assessment processes and provide more efficient and effective environmental assessment processes for those processes accredited under the Agreement, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation.



Senator The Hon Murray Watt

Minister for the Environment and Water

10 day of February 2026

Annexure A - Legislation

Section 45 of the EPBC Act relevantly provides:

Making bilateral agreement

- (1) On behalf of the Commonwealth, the Minister may enter into a bilateral agreement.

Note 1: A bilateral agreement can detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans and other approaches to environmental protection.

Note 2: Subdivision B sets out some prerequisites for entering into bilateral agreements.

*What is a **bilateral agreement**?*

- (2) A **bilateral agreement** is a written agreement between the Commonwealth and a State or a self-governing Territory that:
- (a) provides for one or more of the following:
 - (i) protecting the environment;
 - (ii) promoting the conservation and ecologically sustainable use of natural resources;
 - (iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions;
 - (iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and
 - (b) is expressed to be a bilateral agreement.

Publishing notice of intention to enter into agreement

- (3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.

Publishing bilateral agreements and related material

- (4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:
- (a) the agreement; and
 - (b) a statement of the Minister's reasons for entering into the agreement; and
 - (c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

Section 47 of the EPBC Act relevantly provides:

Declaration of actions that do not need further assessment

- (1) 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.

Prerequisite to declaration

- (2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in the specified manner will include assessment of the impacts the action:
- (a) has or will have; or
 - (b) is likely to have;
- on each matter protected by a provision of Part 3.

Assessment approaches that may be accredited

- (3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:
- (a) assessment by any person under a law of the State or Territory; and
 - (b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and
 - (c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.
- This does not limit subsection (1).

Report on actions that do not need further assessment

- (4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Section 48 of the EPBC Act relevantly provides:

- (1) A bilateral agreement may include:
- (a) provisions for State accreditation of Commonwealth processes and decisions; and
 - (b) other provisions for achieving the object of this Part; and
 - (c) provisions for the provision of information by one party to the agreement to the other party; and
 - (d) provisions for the publication of information relating to the agreement; and
 - (e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:
 - (i) provisions for the commencement of all or part of the agreement; or
 - (ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or
 - (iii) provisions for review of all or part of the agreement; or
 - (iv) provisions for rescission of all or part of the agreement; or
 - (v) provisions for expiry of the agreement; and
 - (f) provisions varying or revoking another bilateral agreement between the same parties; and
 - (g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Consistency with Act and regulations

- (2) A provision of a bilateral agreement has no effect for the purposes of this Act to the extent that it is inconsistent with this Act or the regulations. A provision of a bilateral agreement is not inconsistent with this Act or the regulations if it is possible to comply with both the provision on the one hand and the Act or regulations on the other hand.

Relationship with sections 46 and 47

- (3) Subsection (1) does not limit sections 46 and 47.

Section 48A of the EPBC Act relevantly provides:

Application

- (1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46 or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

Agreements including declarations about assessment

- (3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:
 - (a) actions taken in the State or Territory by a constitutional corporation;
 - (b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;
 - (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
 - (d) actions taken in the Territory (if applicable).

Auditing

- (4) A bilateral agreement does not have effect for the purposes of this Act unless it includes a provision recognising that, under the *Auditor-General Act 1997*, the Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) relating to the bilateral agreement.

Section 49 of the EPBC Act relevantly provides:

- (1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.

Section 49A of the EPBC Act provides:

The Minister may enter into a bilateral agreement only if he or she:

- (a) has published in accordance with the regulations:
 - (i) a draft of the agreement; and

- (ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and
- (b) has taken into account the comments (if any) received in response to the invitation; and
- (c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.

Section 50 of the EPBC Act provides:

The Minister may enter into a bilateral agreement only if the Minister is satisfied that the agreement:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

Section 51 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.

Section 51A of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the provision meets the requirements (if any) prescribed by the regulations.

Section 52 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.

Section 53 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:

- (i) the Biodiversity Convention; or
- (ii) the Apia Convention; or
- (iii) CITES; and
- (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
- (c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (ca) the Minister has had regard to any approved conservation advice for the species or community; and
- (d) the provision meets the requirements (if any) prescribed by the regulations.

Section 54 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
 - (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.

Section 55 of the EPBC Act relevantly provides:

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management arrangement or an authorisation process, containing a provision that:

- (a) relates to a nuclear action; and
- (b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of a nuclear action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.

Section 56 of the EPBC Act provides:

The Minister must not enter into a bilateral agreement containing a provision that:

- (a) relates to an action prescribed for the purposes of subsection 25(1); and
- (b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.