



Government of
South Australia

COMMONWEALTH OF AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

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 South Australia
(**SA**)



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Details

Parties

1. The Minister for the Environment and Water for and on behalf of the Commonwealth of Australia (the **Commonwealth**).
2. The State of South Australia (**SA**).

Background

- A. The parties are committed to working together across shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and SA 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 SA are jointly committed to maintaining high environmental standards and working together to streamline environmental assessment by this Agreement. This includes ensuring the adoption of best practice regulatory processes for achieving a transparent, efficient, timely and effective process for environmental assessment of actions.
- D. The parties will work cooperatively 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.
- E. This Agreement provides for the accreditation of the SA processes set out in Schedule 1 to ensure an integrated and coordinated approach to the assessment of controlled actions requiring approval from both the Commonwealth Minister (under the EPBC Act) and SA.
- F. This Agreement will therefore enable the Commonwealth to rely on the SA assessment processes set out in Schedule 1 for assessment of controlled actions under the EPBC Act. In addition, 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.
- 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.

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 SA, as amended from time to time, and includes its Schedule(s).
Assessment Report	for the class of actions described in: (a) Item 2.1(b)(i) of Schedule 1, an assessment report prepared under section 113(9) of the <i>Planning, Development and Infrastructure Act 2016</i> (SA) and Item 3.4 of Schedule 1; (b) Items 2.1(b)(ii) and 2.1(b)(iii) of Schedule 1, an assessment report prepared under Item 3.4 of Schedule 1; (c) Items 2.1(d)(i) and 2.1(d)(vi) of Schedule 1, an assessment report prepared under Item 4.5 of Schedule 1; and (d) Items 2.1(d)(ii), 2.1(d)(iii), 2.1(d)(iv) and 2.1(d)(v) of Schedule 1, an assessment report prepared under section 56ZA of the <i>Mining Act 1971</i> (SA) and Item 4.5 of Schedule 1.
Commencement Date	the later of: (a) 30 days after the date this Agreement is executed by the last party; and (b) the date on which the SA Minister notifies the Commonwealth Minister in writing that the Implementation Instruments are in force.
Commonwealth Minister	the Minister administering the EPBC Act and includes a delegate of the Minister.
Department	the Commonwealth Department of Climate Change, Energy, the Environment and Water, or any other Commonwealth agency that administers this Agreement from time to time.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).

Implementation Instruments	the practice directions, regulations and other statutory instruments made under the <i>Planning, Development, and Infrastructure Act 2016 (SA)</i> , the <i>Mining Act 1971 (SA)</i> and any other relevant Law that are considered by the State to be necessary or desirable to give effect to the processes and requirements set out in Schedule 1.
Information	includes data.
Law	subject to clauses 1.2(g) and 1.2(h), 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 applicable from time to time.
Matter of NES	a matter protected by a provision of Part 3 of the EPBC Act.
Previous Bilateral Agreement	the bilateral agreement dated 24 September 2014 between the Commonwealth and SA relating to environmental impact assessment.
SA Minister	the SA Minister administering legislation accredited for the purpose of this Agreement and includes a delegate of the Minister.
State Planning Commission	the SA State Planning Commission established under Division 1 of Part 3 of the <i>Planning, Development and Infrastructure Act 2016 (SA)</i> .
Schedule	a schedule to this Agreement.

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 all 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 party or parties is a reference to the parties to this Agreement;
- (e) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement;
- (f) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it;

- (g) a reference to a Law that is an Act made by the Commonwealth Parliament, a legislative instrument covered by subsection 46AA(3) of the *Acts Interpretation Act 1901* (Cth) or a provision of rules of court, is a reference to that Law as in force from time to time, and includes any consolidations, amendments, re-enactments or replacements of any of them;
- (h) a reference to SA legislation is a reference to that legislation as in force at the Commencement Date;
- (i) a reference to a 'person' has the meaning given to that term under section 2C of the *Acts Interpretation Act 1901* (Cth)
- (j) a reference to the boundary of a State is a reference to the terrestrial limit of that State and the limit of that State as defined in section 3 of the *Coastal Waters (State Powers) Act 1980* (Cth); and
- (k) 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) the Schedule(s); then
- (c) the Administrative Arrangements.

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 until it is rescinded or revoked by further agreement between the parties or it is 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

Subject to clause 4.2 and 4.3, it is declared for the purposes of subsection 47(1) of the EPBC Act, that a controlled action does not require assessment under Part 8 of the EPBC Act if the action is in any of the classes of actions specified in Schedule 1.

4.2 Scope

- (a) Subject to clause 4.3, clause 4.1 applies to actions which occur wholly within the boundary of SA, including its coastal waters.
- (b) For actions which do not occur wholly within the boundary of SA, or which are taken within the boundary of SA but have or are likely to 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:
 - (i) a controlled action in a Commonwealth area;
 - (ii) where part but not all of a controlled action is within a Commonwealth area, that part of the action that is in a Commonwealth area; or
 - (iii) a controlled action taken by the Commonwealth or a Commonwealth agency.
- (d) This Agreement does not prevent the Commonwealth Minister deciding on a 'one off' accreditation under section 87(1)(a) of the EPBC Act, for processes not accredited under this Agreement.

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.
- (b) The Commonwealth Minister cannot make a decision under clause 4.3(a) after the SA Minister has given notice under clause 5.4.

4.4 Previous Bilateral Agreement

The Previous Bilateral Agreement is revoked from the Commencement Date and replaced by this Agreement.

5. Procedures for referral

5.1 SA to inform proponents of need to refer under the EPBC Act

SA will use its best endeavours to inform proponents that an action may need to be referred to the Commonwealth Minister under the EPBC Act and that the action may be assessed under this Agreement.

5.2 Commonwealth consideration of an action

Where a Commonwealth agency becomes aware of an action that may belong to a class of actions to which the declaration in clause 4.1 applies:

- (a) the Commonwealth agency may direct the proponent of the action to request a decision from SA on whether the action will be assessed in a manner specified in Schedule 1; and
- (b) SA must ensure that the proponent and the Commonwealth Minister are advised of that decision.

5.3 Commonwealth Minister to inform SA Minister about whether an action is a controlled action

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

- (a) is proposed to be taken in SA; 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.

5.4 Notification by SA Minister that an accredited process will apply

- (a) Where:
 - (i) the Commonwealth Minister has notified the SA Minister that an action proposed to take place in SA 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 SA Minister must within 15 business days after receiving the written notice referred to in clause 5.3, advise the Commonwealth Minister, in writing, whether the action will be assessed in a manner specified in Schedule 1.

- (b) If SA asks the Commonwealth Minister, under section 79 of the EPBC Act, to reconsider the decision that the action is a controlled action, then the 10 business day period referred to in clause 5.4(a) begins on the day that the State receives the notice described in subsection 79(3) of the EPBC Act. This notice, amongst other things, informs the State of the outcome of the Commonwealth Minister's reconsideration.

5.5 Notification by SA Minister of suspension, termination or changed method of assessment

- (a) This clause 5.5 applies to any controlled action that is within a class of actions to which clause 4.1 applies, during the period from the date that the SA Minister gives notice to the Commonwealth Minister under clause 5.4 that the controlled action will be assessed in a manner specified in Schedule 1, until the date that the SA Minister provides the final Assessment Report referred to in clause 6.6 to the Commonwealth Minister in respect of that controlled action.
- (b) The SA Minister must advise the Commonwealth Minister, in writing, within 10 business days after:
 - (i) the environmental assessment for the controlled action is:
 - (A) suspended;
 - (B) terminated; or
 - (C) recommenced,with such notice to set out the date from which the suspension, termination or recommencement took effect, and the reasons for the suspension, termination or recommencement; or
 - (ii) the environmental assessment approach or requirements for the controlled action are changed such that the controlled action would

- (A) no longer be within a class of actions to which clause 4.1 applies; or
- (B) be within a different class of actions to which clause 4.1 applies, with such notice to set out the date from which the changed environmental assessment approach or requirements took effect, and the reasons for changing the environmental assessment approach or requirements.

6. Assessment

6.1 Statutory undertaking

- (a) Where an action:
 - (i) is a controlled action taken or proposed to be taken in SA;
 - (ii) does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1; 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,

SA 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 6.1(a) is satisfied where the assessment has been undertaken in a specified manner of assessment as outlined in Schedule 1.

6.2 Proponent service delivery charter

For controlled actions, the parties agree to establish a proponent service delivery charter for appropriate assessment projects in the manner set out in the Administrative Arrangements.

6.3 Single assessment

- (a) In determining the assessment approach for a controlled action, SA 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) To inform SA's determination of the assessment approach, the Commonwealth Minister will provide to SA a copy of the notice of the decision and reasons for the decision provided to the proponent under section 77 of the EPBC Act.

- (c) To ensure that a single SA assessment can be relied on by the Commonwealth Minister for a decision under Part 9 of the EPBC Act, SA will ensure that the Assessment Report includes:
- (i) a description of:
 - (A) the action;
 - (B) the places affected by the action; and
 - (C) any Matters of NES that are likely to be affected by the action;
 - (ii) all relevant impacts on Matters of NES separately. This means that the nature and extent of likely impacts must be explicitly assessed for each Matter of NES, being, as relevant:
 - (A) the World Heritage values of a World Heritage property;
 - (B) the National Heritage values of a National Heritage place;
 - (C) the ecological character of a Ramsar wetland;
 - (D) listed threatened species (except a conservation dependent species) or their habitat, or any listed threatened ecological communities;
 - (E) the members of a listed migratory species or their habitat;
 - (F) a water resource, in relation to unconventional gas or large coal mining developments;
 - (G) the environment of the Commonwealth marine area (for actions outside the Commonwealth marine area that may impact the environment in the Commonwealth marine area);
 - (H) the environment, in the case of a nuclear action; and / or
 - (I) Commonwealth land (for actions outside Commonwealth land that may impact on the environment on Commonwealth land);
 - (iii) a clear identification of all relevant impacts on matters of NES.
 - (iv) 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; and
 - (v) 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;
 - (vi) 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;
 - (vii) a statement of SA approval requirements and conditions that apply, or are proposed to apply, to the action when the Assessment Report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action; and
 - (viii) the Information and opinion on which the assessment is based, or its source.
- (d) In relation to unconventional gas and large coal mining developments, SA will:

- (i) jointly with the Commonwealth, obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development if the taking of the action, or a class of actions that includes the action, is determined to be a controlled action that is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and
 - (ii) take into account, when preparing the Assessment Report and in making a recommendation (including recommended conditions) to the Commonwealth Minister, any relevant advice obtained from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.
- (e) SA may seek advice from other expert advisory bodies established under the EPBC Act, the Department, or from Commonwealth agencies with relevant expertise, with details to be set out in the Administrative Arrangements.
- (f) The Commonwealth may seek expert advice from SA in relation to the Assessment Report and the recommended decision (including recommended conditions) in the form of Information provided directly to the Commonwealth Minister, including but not limited to, through the presence of SA officers at the briefing of the Commonwealth Minister, for the purposes of informing the Commonwealth Minister's decision on whether to approve the taking of an action under Part 9 of the EPBC Act.

6.4 Efficiency and effectiveness

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

6.5 Draft Assessment Report

- (a) SA will provide to the Commonwealth Minister for comment a draft Assessment Report (or relevant part which addresses impacts on Matters of NES) 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.
- (b) After receiving a copy of the draft Assessment Report, the Commonwealth Minister will provide advice within an agreed timeframe as to whether it provides the required Information for the Commonwealth Minister to make a decision on whether or not to approve the action under Part 9 of the EPBC Act. The process for the timeframe to be agreed will be set out in the Administrative Arrangements.
- (c) If the Commonwealth Minister does not respond within the agreed timeframes it is taken that the Commonwealth has no additional requirements.
- (d) If the Commonwealth Minister decides that further Information is required, SA will either:
 - (i) provide the Information; or
 - (ii) proceed to finalise the Assessment Report notwithstanding the advice.

6.6 Final Assessment Report

- (a) When an action is assessed in the manner specified in Schedule 1 SA will:
 - (i) provide a copy of the final Assessment Report or part thereof which addresses the relevant impacts of the action, together with the relevant

assessment documentation and any other relevant Information on which the Assessment Report is based, to the Commonwealth Minister on the date on which the Report is provided to the proponent or decision-maker or published under the relevant State legislation; and

- (ii) if the State decision maker seeks further Information relevant to impacts on Matters of NES after the Assessment Report is provided under clause 6.6(a)(i) - provide copies of that further Information to the Commonwealth Minister not more than 10 business days after the date on which the Information is provided to the State decision-maker.
- (b) SA may, when it provides the final Assessment Report referred to in this clause 6.6(a), provide the Commonwealth Minister with additional Information on social, cultural and economic matters (but only if the provision of this Information does not breach privacy or commercial in confidence Information requirements, or any relevant Law).

6.7 Additional Information

- (a) If, in deciding whether to approve the taking of a controlled action assessed under this Agreement, the Commonwealth Minister takes into account any Information described in section 136(2)(e) of the EPBC Act, the Commonwealth Minister undertakes to provide a copy of this Information to the SA Minister.
- (b) The Commonwealth Minister agrees to give SA an opportunity to comment on the accuracy of any Information provided to the SA Minister under clause 6.7(a), 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 controlled action.

6.8 Relevant guidelines, policies and plans

When preparing Assessment Reports on relevant impacts under this Agreement, SA agrees to take into account relevant guidelines, policies and plans, including where relevant:

- (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 wildlife conservation plan for a listed migratory species.

7. Transparency and access to Information

7.1 Clause 7 only applies to 'controlled actions'

To avoid doubt, this clause 7 only applies where a proposed action is a 'controlled action' for the purposes of the EPBC Act.

7.2 Indigenous peoples

- (a) The parties agree that assessments of a controlled action made in accordance with Schedule 1, will recognise the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources.
- (b) The parties will promote the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.
- (c) 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.
- (d) In particular, SA will ensure that proponents:
 - (i) take all reasonable steps to obtain the views of any Indigenous peoples directly affected by the taking of a controlled action that is assessed under this Agreement if that action is likely to have a significant impact on a Matter of NES that relates to Indigenous cultural heritage (which may include impacts on biodiversity) or, that will occur on or directly affect land subject to that group's native title rights and interests;
 - (ii) ensure that the views of Indigenous peoples are treated as the primary source of Information on the value of Indigenous cultural heritage to which a particular Matter of NES relates; and
 - (iii) consider and apply, as appropriate, guidelines developed by the Commonwealth for consulting with Indigenous peoples in relation to proposed actions that are likely to affect Matters of NES.
- (e) In relation to actions assessed under the *Mining Act 1971* (SA), the requirements in clauses 7.2(d)(i) and 7.2(d)(ii) are satisfied by the processes presently prescribed to meet the requirements of part 9B of the *Mining Act 1971* (SA) in relation to native title land.
- (f) The Commonwealth will consult with SA before amending or adopting any guidelines referred to in clause 7.2(d)(iii).

7.3 Public access – generally

SA agrees that documentation about each assessment of a controlled action made under a manner specified in Schedule 1 will be available to the public, subject to any appropriate statutory exemptions (including commercial-in-confidence Information, Information that is critical to the protection of a Matter of NES and information relating to Indigenous cultural heritage). Documentation about each assessment includes guidelines for assessment and Assessment Reports, as identified in Schedule 1.

7.4 Public access – particular needs groups

SA will, in providing public access to assessment documentation, make special arrangements, if 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.

Note: Groups with particular communication needs may include those with a vision or hearing impairment; who are illiterate or for whom English is a second language; and who, because of a disability, have difficulty accessing paper documentation or using a computer.

8. Conditions

8.1 Conditions attached to an approval

- (a) The parties recognise the desirability of avoiding, to the extent practicable, inconsistent conditions applying to a controlled action assessed under this Agreement and SA legislation.
- (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 State conditions that have been or are likely to be imposed under SA legislation on the taking of the controlled action when deciding whether to attach a condition to an approval;
 - (ii) agree to consult on the conditions 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 the 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 controlled actions assessed under this Agreement, both parties will use their best endeavours to ensure that conditions related to Matters of NES are consistent.

8.2 Monitoring compliance with conditions

- (a) Where an action:
 - (i) is taken in SA;
 - (ii) requires the approval of the Commonwealth Minister under Part 9 of the EPBC Act; and
 - (iii) requires approval (however described) under SA legislation,the parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing 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;
- (d) which may include guidelines on the exchange of Information for the purposes of clause 9.3;
- (c) which will allow proponents to simultaneously satisfy both requirements under the EPBC Act and relevant SA legislation; and
- (d) that otherwise provide for the implementation of this Agreement.

9.2 Senior officers' committee

The Administrative Arrangements will detail and provide for the establishment, operation, and terms of reference of a senior officers' committee to oversee the implementation of this Agreement.

Note: The parties intend that the senior officers' committee would have alternating Chairs and would deal with both specific matters arising, including matters in dispute, but also be responsible for the ongoing health of this Agreement and the partnership, including making recommendations to governments on a continuous improvement basis, and to consider the implications of any legislative or other system changes proposed by either party.

9.3 Exchange of Information

- (a) Subject to the permission of the owner of the relevant Information, 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 any relevant law, the permission of the owner of the relevant Information and the confidentiality requirements of the party providing the Information, the parties agree to make available to each other any appropriate and relevant Information for the parties to meet their respective responsibilities relating to this Agreement.
- (c) Each party agrees that Information disclosed by one party 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 Information will not be used or communicated to any other person without the permission of the owner.

9.4 Aligning assessment processes

The parties recognise that there is opportunity to streamline assessment processes even where those assessment processes cannot be accredited. To this end, the parties agree that they will cooperate to align, as far as practicable, SA and Commonwealth assessment processes in the manner set out in the Administrative Arrangements.

9.5 Guidance documents

- (a) The parties commit to 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 9.5, guidance documents may include:
 - (i) referral / application guidelines in relation to significant impacts on Matters of NES;
 - (ii) guidance documents for listed threatened species and ecological communities; and

- (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 SA, 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 Administrative Arrangements will set out the process that the parties agree to follow in conducting each review.
- (e) The Commonwealth Minister must publish the report of each review in accordance with the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth), and give a copy of the report of each review to SA.

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.

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 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) between officers of the senior officers committee established under clause 9.2;
 - (B) between the Secretary of the Department and the equivalent SA official; and
 - (C) correspondence between the Commonwealth Minister and the SA 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 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 SA Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister to cancel or suspend all or part of this Agreement if the SA Minister requests a notice of cancellation or suspension in accordance with this Agreement.
- (b) A request by the SA 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 the request is made:
 - (i) on the grounds that the SA Minister is not satisfied that the Commonwealth has complied or will comply with this Agreement;
 - (ii) on the grounds that the SA Minister is not satisfied that the objects of this Agreement are being achieved; or
 - (iii) the implementation of this Agreement has become impracticable, and before making the request, the SA 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 in relation to this Agreement, the Commonwealth Minister must reach agreement with the appropriate SA Minister on the wording of the amendment.

14.3 Amendment of legislation

If the EPBC Act, the *Planning, Development and Infrastructure Act 2016* (SA), the *Mining Act 1971* (SA), 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 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 to the email address notified by the relevant party from time to time.

16.3 Disclosure of Information

Notwithstanding any other provision of this Agreement, the Department may disclose Information about this Agreement required to be reported by the Department.

Schedule 1 – Declared class of actions

1. Preamble

- (a) 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.
- (b) 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

- (a) Subject to Item 2.2 of this Schedule 1, for the purposes of the declaration in clause 4.1 of this Agreement, the classes of actions are those specified in this Item 2.1 of this Schedule 1.

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) of this Schedule 1 are taken to correspond to assessment by environmental impact statement under Division 6 of Part 8 of the EPBC Act.

2.2 Excluded actions

- (a) A class of actions described in Item 2.1 of this Schedule 1 does not include actions which have been prescribed under subsection 25(1) of the EPBC Act.
- (b) A class of actions described in Item 2.1(b) or (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(b) (*Planning, Development and Infrastructure Act 2016* (SA))

3.1 Overview

- (a) Any controlled action subject to this Agreement and assessed using one of the assessment approaches described above at Item 2.1(b), or below at Item 4.1(b), must also be subject to the additional requirements in this Item 3 of this Schedule 1.
- (b) Where the assessment of a controlled action under an assessment approach described above at Item 2.1(b) is on the basis of an application made to the Minister responsible for the administration of the *Roxby Downs (Indenture Ratification) Act 1982* (**South Australian Indenture Minister**), then the activities that are required to be taken by either or both of the State Planning Commission and the SA Minister under this Item 3 of this Schedule 1, may instead be taken by the South Australian Indenture Minister.

3.2 Guidelines for assessment

- (a) The SA Minister must have issued the proponent of a controlled action described above at Item 2.1(b)(i) with written guidelines to ensure that the assessment:
 - (i) assesses all relevant impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;
 - (ii) 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; and

- (iii) addresses the matters prescribed in the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth) 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) The written guidelines referred to in Item 3.2(a) must be in the form of either:
 - (i) a practice direction published under section 113 of the *Planning, Development and Infrastructure Act 2016* (SA), that addresses the matters listed in Item 3.2(a); or
 - (ii) a guideline prepared by the SA Minister specifically for the purpose of addressing the matters listed in Item 3.2(a).

Note: The guidelines referred to in Item 3.2(b)(ii) may be generic to a specific class of action or be issued on a case by case basis.

- (c) The State Planning Commission, if appropriate, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister, must have sought public comment on the guidelines before they are made. If public comments are sought, then the public must have been given at least 28 days to provide comments to the State Planning Commission.
- (d) The assessment documentation for an EIS made available to the public must have adequately addressed the guidelines for the assessment.

3.3 Public comment

- (a) For the class of action described in Item 2.1(b)(i) of this Schedule 1:
 - (i) the draft EIS for each assessment must have been made available to the public and released for public comment; and
 - (ii) the public must have been given at least 28 days to provide comments to the consent authority.
- (b) For the class of actions described in Items 2.1(b)(ii) and 2.1(b)(iii) of this Schedule 1:
 - (i) draft assessment documentation about each assessment must have been made available to the public and released for public comment; and
 - (ii) the public must have been given at least 14 days to provide comments to the consent authority.
- (c) When the public is invited to comment on guidelines under Item 3.2(c) or on assessment documentation under Items 3.3(a) or 3.3(b), the invitation must
 - (i) have been published in accordance with the requirements:
 - (A) in respect of Items 3.2(c) and 3.3(a) of this Schedule 1, Item 7.02 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth); or
 - (B) in respect of Item 3.3(b) of this Schedule 1, Item 7.03 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth); and

- (ii) have included the matters specified in Item 7.04 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth).
- (d) For the class of actions described in Item 2.1(b)(i) of this Schedule, the proponent must have prepared a written response to all submissions referred to the proponent under section 113(7) of the *Planning, Development and Infrastructure Act 2016* (SA), and provided a copy of that response to the SA Minister, in accordance with section 113(8) of the *Planning, Development and Infrastructure Act 2016* (SA).
- (e) For the class of actions described in Item 2.1(b)(ii) and 2.1(b)(iii), the proponent must have:
 - (i) been provided with submissions made by the public during the period that the assessment is released for public comments; and
 - (ii) prepared a written response for inclusion in the assessment documentation, which summarises or takes into account the issues raised by the public in those submissions.

3.4 Assessment Reports

An assessment report must have been prepared by the State Planning Commission for each action that is assessed which takes into account:

- (a) the Information in the assessment documentation;
- (b) any comments provided by the public during the review period; and
- (c) any other relevant Information available to the SA Minister.

4. Specified manner of assessment – Item 2.1(d) (*Mining Act 1971* (SA))

4.1 Overview

- (a) Any controlled action subject to this Agreement and assessed using one of the assessment approaches described above at Item 2.1(d) of this Schedule 1, must also be subject to the additional requirements in this Item 4 of this Schedule 1.
- (b) Where for the class of actions described above at Items 2.1(d)(ii) and 2.1(d)(iii) of this Schedule 1, the assessment approach requires the preparation of an environmental impact statement because of section 160 of the *Planning, Development and Infrastructure Act 2016* (SA), the assessment approach must also be subject to the requirements set out in Item 3 of this Schedule 1.

Note: It is intended that this Item 4.1 only applies to applications made under the Mining Act 1971 (SA).

4.2 Guidelines for assessment

- (a) The SA Minister must have issued the proponent of a controlled action described above at Item 2.1(d) with written guidelines to ensure that the assessment:
 - (i) assesses all relevant impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;

- (ii) provides 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) addresses the matters prescribed in the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth) 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) The written guidelines referred to in Item 4.2(a) must be in the form of either:
- (i) the 'terms of reference document' published in the South Australian Government Gazette relevant to the particular controlled action, that addresses the matters listed in Item 4.2(a); or
 - (ii) a guideline prepared by the SA Minister specifically for the purpose of addressing the matters listed in Item 4.2(a).

Note: The guidelines referred to in Item 4.2(b)(c)(ii) may be generic to a specific class of action or be issued on a case by case basis.

- (c) The SA Minister, if appropriate, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister, must have sought public comment on the guidelines before they are made. If public comments are sought, then the public must have been given at least 28 days to provide comments to the SA Minister.
- (d) The assessment documentation made available to the public must have adequately addressed the guidelines for the assessment.

4.3 Assessment approach must assess relevant impacts

The assessment approach must have included an assessment of the relevant impacts of the action as defined in section 82 of the EPBC Act.

4.4 Public comment

- (a) For each of the class of actions described in Item 2.1(d) of this Schedule 1:
 - (i) draft assessment documentation about each assessment must have been made available to the public and released for public comment; and
 - (ii) the public must have been given at least 28 days to provide comments to the consent authority.
- (b) When the public is invited to comment on guidelines under Item 4.2(c) or on assessment documentation under Item 4.4(a), the invitation must:
 - (i) have been published in accordance with the requirements of Item 7.02 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2025* (Cth); and
 - (ii) have included the matters specified in Item 7.04 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2025*(Cth).
- (c) The proponent must have:
 - (i) been provided with submissions made by the public during the period that the assessment is released for public comments; and

- (ii) prepared a written response for inclusion in the assessment documentation, which summarises or takes into account the issues raised by the public in those submissions.

4.5 Assessment Report

An assessment report must have been prepared by the SA Minister for each action that is assessed which takes into account:

- (a) the Information in the assessment documentation;
- (b) any comments provided by the public during the public review period; and
- (c) any other relevant Information available to the SA Minister or inquiry.

Execution page

EXECUTED as an agreement

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



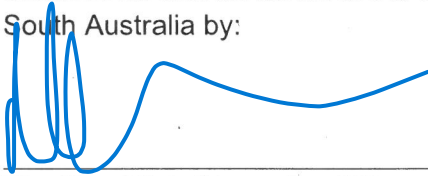
Senator the Hon Murray Watt

Minister for the Environment and Water

10/2/26

Date

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



The Hon Nick Champion MP

Minister for Planning

18/2/26

Date

The Hon Tom Koutsantonis MP

Minister for Energy and Mining

Date



The Hon Lucy Hood MP

Minister for Climate, Environment and
Water

15 February 2026

Date

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Senator the Hon Murray Watt

Minister for the Environment and Water

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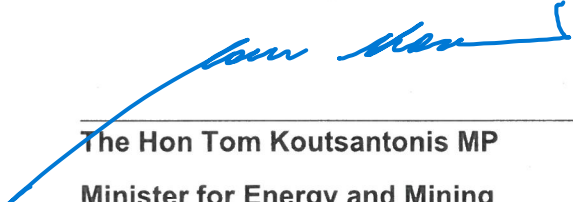
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