

FIVE YEAR REVIEW OF THE BILATERAL AGREEMENT RELATING TO ENVIRONMENTAL ASSESSMENT

The State of New South Wales
(The Department of Planning, Industry and
Environment)

and

Commonwealth of Australia
(The Department of Agriculture, Water and Energy)

November 2021

EXECUTIVE SUMMARY

Under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (**the EPBC Act**), approval from the Commonwealth Environment Minister (or their delegate) is needed for any proposed action—including projects, developments, activities, or alteration of these things—likely to have a significant impact on a matter protected by Part 3 of the EPBC Act. Approval can only be granted by the Environment Minister after the impact of the proposed action on the matters protected has been assessed.

Part 5 of the EPBC Act provides for the Commonwealth to enter into bilateral agreements with the states and territories. Under such agreements, the Commonwealth can accredit a state or territories' environment assessment processes where they meet the requirements of the EPBC Act. This allows proponents to prepare a single set of assessment documentation for both the Commonwealth and the state or territory approval purposes, thereby removing duplication in environment regulation.

The Commonwealth and New South Wales (NSW) governments entered an assessment bilateral agreement (**the Agreement**) on 26 February 2015. The Agreement:

- ensures that matters of national environmental significant (**MNES**) are protected as required under the EPBC Act by:
 - Committing NSW to prepare an Assessment Report, including a recommendation to the Commonwealth on whether to approve an action. Where approval is recommended, the Assessment Report is to recommend conditions which, to the greatest extent possible, address impacts to MNES so that there are not unacceptable or unsustainable impacts on those matters.
- ensures an efficient, timely and effective process for environmental assessment and approval of actions by:
 - accrediting certain NSW processes for assessment under the *Environmental Planning and Assessment Act 1979* (NSW), including the NSW Biodiversity Offsets Policy for Major Projects;
 - exempting certain actions from assessment under Part 8 of the EPBC Act, where those actions have been assessed through an accredited process, and in the manner specified in Schedule 1 of the Agreement; and

- committing the Commonwealth to make its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to not be addressed, by NSW conditions.

The Agreement is administered by the New South Wales Department of Planning, Industry and Environment (DPIE) and the Australian Government Department of Agriculture, Water and the Environment (DAWE). A copy of the full Agreement is available at: [Assessment Bilateral Agreement \(NSW\)](#).

A non-statutory transitional review was undertaken covering the 24 months after the Agreement commenced. The report is available at: [Transitional Review](#). The priority initiatives for the Transitional Review are set out in Appendix A.

This report provides an evaluation of the effectiveness of the Agreement as part of the statutory five-year review. The review considered KPI data and stakeholder consultation and made findings against three key questions:

Question 1: How well are matters required by the BA addressed in state assessments?

Finding: State assessments are covering relevant MNES as required. The operation of the Agreement is consistent with Australia’s statutory requirements to ensure MNES are protected as required under the EPBC Act. Stakeholder consultation largely supported these findings.

Question 2: How effective is the Commonwealth’s endorsement of NSW offset approaches to ensure long-term environmental outcomes for relevant MNES?

Finding: State assessments are addressing EPBC matters. Input from internal and external stakeholders also indicates that NSW offset approaches are likely to be contributing to ensuring environmental outcomes for MNES.

Question 3: How effective is the Bilateral Agreement in reducing duplication in regulatory processes?

Finding: The operation of the Agreement has reduced duplication in regulatory processes. Stakeholders emphasised that the success of the Agreement can be attributed to the strong relationships between DPIE and DAWE, and that the spirit of cooperation and consultation embedded in the aims of the Agreement has had a positive flow-on effect to other non-bilateral projects and the interactions between DPIE and DAWE.

The review identified the following priorities to further improve the effectiveness of the Agreement's implementation:

1. Review the existing KPIs and Monitoring, Evaluation and Reporting (MER) Strategy to ensure they best support and measure the desired environmental and efficiency outcomes.
2. Clarify roles and educate stakeholders on the Bilateral Assessment process, and review capacity building measures and governance arrangements to ensure the operation of the Agreement is effective, efficient and timely.
3. Explore ways to improve the existing format and content of standard state assessment reports to suit both DPIE and DAWE decision-making processes.
4. Explore ways to provide greater transparency of mitigation of impacts on MNES, including habitat-based and non-habitat-based offsets through to their retirement. Compare offsets secured against impacts for key species and communities to ensure that offsets are achieving the desired environmental outcomes.

Further information on the Agreement relating to environmental assessment between the Commonwealth and the State of NSW can be found at:

Department of Planning, Industry and Environment

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/assessment-bilateral-agreement>

Department of Agriculture, Water and the Environment

<https://www.environment.gov.au/epbc/single-touch-approvals>

SECTION 1 – BACKGROUND AND SCOPE OF THIS REVIEW

1. Background

Under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act), the NSW Assessment Bilateral Agreement 2015¹ (the Agreement) streamlines the assessment process for major projects that require both NSW and Australian Government environmental approvals.

Under the Agreement, the NSW government assesses development applications on behalf of the Australian Government. The Australian Government remains the decision-maker for the EPBC Act approval, considering the NSW assessment report, including conditions and offset requirements.

The matters required by the Agreement are outlined in the objects of the Agreement. These are presented as a series of commitments, principles and aims which can be summarised as:

- the Australian and NSW Governments work cooperatively to establish a ‘one-stop shop’ for environmental assessment where NSW prepares a state assessment report and presents a recommendation to the Commonwealth Minister;
- the state assessment should address impacts to MNES and make a recommendation to the Commonwealth Minister such that there are no unacceptable impacts to those MNES; and
- the Commonwealth limits conditions of approval to matters not addressed by state conditions.

Object F of the Agreement outlines the aims of the Agreement (Table 1) and reflects the objects of the EPBC Act. The Agreement’s aims are high-level and set the statutory framework within which the Agreement should operate.

¹ The original 2015 Agreement was amended in 2020, resulting from several changes to legislation related to the introduction of the *Biodiversity Conservation Act 2016* (BC Act) and amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Table 1 | Aims of the Agreement

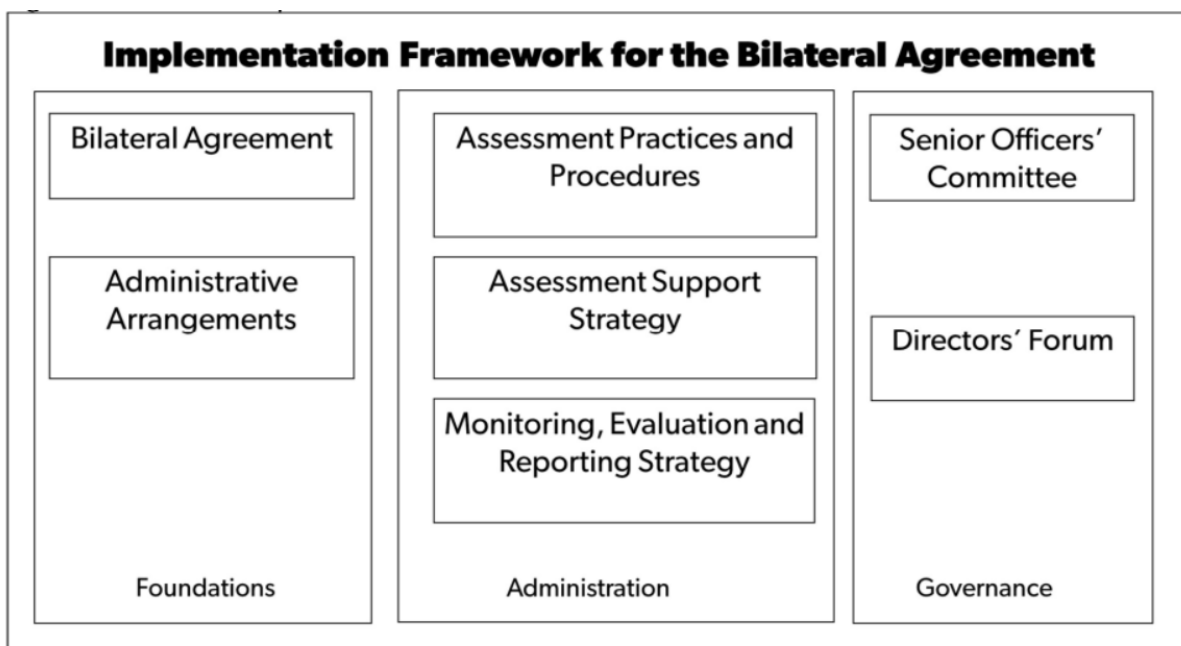
- a. ensure Australia complies fully with its international environmental obligations;
- b. ensure Matters of NES are protected as required under the EPBC Act;
- c. promote the conservation and ecologically sustainable use of natural resources;
- d. ensure an efficient, timely and effective process of environmental assessment and approval of actions; and
- e. minimise duplication in the environmental assessment and approval processes of the Commonwealth and NSW.

The Agreement requires that a review of its operation must be carried out at least once every five years while the Agreement remains in effect, in accordance with section 65 of the EPBC Act.

A non-statutory transitional review of the Agreement was undertaken covering the 24 months from when it commenced. The review identified that the parties had made significant progress in implementing the Agreement, and that some aspects of the Agreement’s operation could be improved (Appendix B).

Many of the recommendations of that review have since been or are being addressed through the Bilateral Implementation Framework (BIF). The BIF was formally introduced in 2018, although most elements have been in place since the start of the Agreement in 2015. The BIF provides detailed information on how the NSW and Australian Government agencies implement the Agreement. Overall, there are seven (7) key components of the BIF grouped in to three subsets: *foundation* documents, *administration* procedures and strategies, and *governance* structures to support implementation (Figure 1).

Figure 1: Bilateral Implementation Framework



The Foundations subset includes the Agreement's Administrative Arrangements. This document was agreed and signed by Senior Officers of the administering agencies i.e., DAWE and DPIE.

The BIF Administration subset refers to key Assessment Practice and Procedure (APP) documents used by the DPIE assessment teams in meeting the terms of the Agreement. In addition, this subset also sets out an Assessment Support Strategy, which describes how the NSW and Australian Government agencies will support the DPIE teams assessing state significant proposals involving impacts on MNES; and a Monitoring, Evaluation and Reporting Strategy, which describes how NSW and Australian Government agencies will monitor, evaluate, and report on the implementation of the Agreement. Monitoring and reporting processes employ KPIs to help demonstrate to both governments that the Agreement is working effectively.

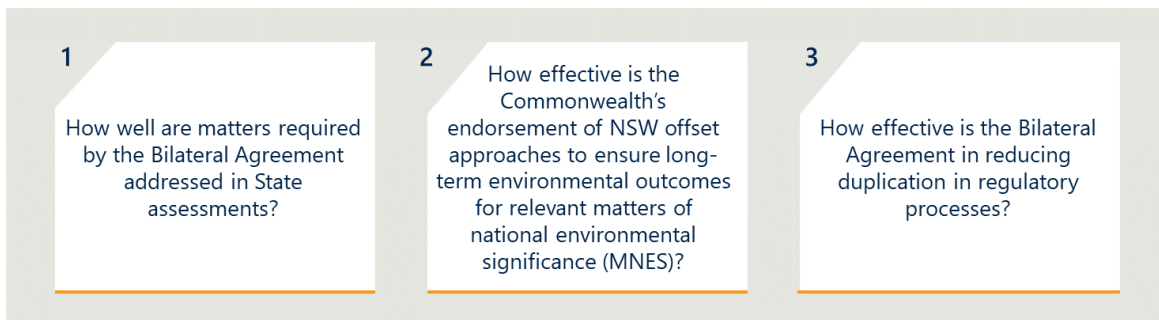
The Governance subset of the BIF includes the Terms of Reference (ToR) document for the Senior Officers Committee (SOC), setting out details on SOC membership and responsibilities, the function of Secretariat, and operating protocols for meetings. This subset also includes the Operating Procedure for the NSW-Commonwealth Directors' Forum, which was established to support the SOC.

Implementation of the BIF has in turn helped to improve implementation of the Agreement over the five-year term of this review. The BIF has clarified how the different components, such as the Agreement, the SOC, Assessment Support Strategy, and Monitoring, Evaluation and Reporting Strategy, relate to each other. The Agreement's administration has also improved through the BIF, regular director level meetings (i.e. interagency coordination meetings), and training for relevant staff in both the Australian and NSW government teams.

2. Review scope

In 2019, the SOC agreed to terms to guide the 2020 Five-Year Review including the scope, three key questions and number of projects to be evaluated for each KPI. This review considers whether the Agreement has been operating effectively over the period of 26 February 2015 to 26 February 2020 inclusive. The 5 Year Review report was drafted for review by DPIE and DAWE in December 2020.

The review considered data and stakeholder feedback against three questions, as a measure of whether the Agreement has been consistent with its high-level aims (Table 1 above):



SECTION 2 – REVIEW METHODOLOGY

The review’s methodology involved three stages:



a. Collecting data against the KPIs

Since 2015, 65 development proposals have been assessed under the Bilateral or Accredited Assessments (Bilateral Assessments) within the NSW assessment system.

The NSW and Australian Government agreed on a list of 21 projects to be included in this review (Appendix B). These projects have completed an assessment under the Agreement. It does not include projects currently being assessed.

The review included analysis of 13 KPI data for these 21 projects. The KPIs were agreed to by the SOC in 2015, and updated in 2019 to reflect proposed changes in offsetting arrangements and to better provide a framework for ongoing review, reporting and improvement. The KPIs are set out in the table below, and also in the Nous Group Report (Attachment C).

The SOC agreed that some KPIs apply to all projects, i.e., they focus on the total impact of all projects assessed under the Agreement, while others KPIs are applicable to only a sample of 14 determined projects to enable a more detailed review of these projects.

DPIE and DAWE collected data against each KPI from publicly available assessment reports, business as usual activities, and annual reports to the SOC. Independent consultants, WolfPeak, also compiled KPI data. They then analysed the collective data to produce quantitative figures for each KPI.

KPI 1	The proportion of projects that were assessed by NSW through an accredited process but were not assessed through the Agreement to understand whether the scope of the Agreement is being fully realised.
KPI 2	<p>The proportion of reviewed projects where the Assessment Report and related assessment documentation explicitly analysed and/or described the matters required by the bilateral agreement, including:</p> <ul style="list-style-type: none"> • the likely impacts on MNES; • any expert advice provided; • the steps proposed to avoid or mitigate those impacts; • the significance of the residual adverse impact(s); • the consistency or otherwise of the proposed action with the relevant provision(s); • the policies and guidelines relating to those MNES, and how they were considered or relied upon; • that the NSW decision-maker had regard to the principles of sustainable development or ecologically sustainable development, as set out in the applicable NSW Laws,
KPI 3	<p>The proportion of reviewed projects where the Assessment Report:</p> <ul style="list-style-type: none"> • included the recommendations to the NSW and Commonwealth decision-makers regarding the approval of the action and any conditions; • provided reasons for the recommendations to the Commonwealth decision-maker; • separately identified any recommended conditions relating to the protection of MNES,
KPI 4	<p>The proportion of reviewed projects involving offsets where NSW provided the Commonwealth with information regarding the methodology used to derive the offset, the nature of the offset, and, if relevant, its location.</p> <p>This includes demonstrating that the offsets applied were derived:</p>

	<p>(a) under the draft NSW Biodiversity Offsets Policy for Major Projects (including the Framework for Biodiversity Assessment);</p> <p>(b) in accordance with the rules established under section 127B of the Threatened Species Conservation Act 1995;</p> <p>(c) under the Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management (2013 update); or</p> <p>(d) under the Biodiversity Offset Scheme set out in the NSW Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulations 2017.</p>
KPI 5	The proportion of reviewed projects involving offsets where the offset proposed in the Assessment Report was consistent with the principles listed on page 6 of the EPBC Act Environmental Offsets Policy.
KPI 6	Number of times the escalation process was triggered.
KPI 7	<p>The proportion of reviewed projects for which offsets relating to MNES were required that:</p> <ul style="list-style-type: none"> • had secured the required offset(s) within the timeframe(s) required by the approval as originally issued, or • where the period of time between the commencement of the action and the securing of the offset(s) had not been increased subsequent to the giving of the approval.
KPI 8	The total area of habitat for Matters of NES that has been impacted
KPI 9	The total area of habitat that has been secured through offsets, as a result of environmental assessment.
KPI 10	The proportion of reviewed projects involving offsets that deviated from a habitat-based offset.
KPI 11	The number of projects where the Commonwealth decision-maker considered on reasonable grounds that they did not have sufficient information to make an informed decision and requested additional information under s.132 of the EPBC Act prior to making an approval decision.

KPI 12	The average period, in statutory days, between the receipt of the Assessment Report from NSW, which commences the statutory decision period under Part 9 of the EPBC Act, and the making of a decision on whether to approve the action.
KPI 13	The number of projects where the Commonwealth decision-maker decided to apply: <ul style="list-style-type: none"> • no Commonwealth conditions, • a single condition requiring compliance with NSW conditions, or • additional Commonwealth conditions, including conditions that were recommended by NSW.

b. Evaluation

Independent consultants Nous Group evaluated the KPI data, and considered conformance reviews, operational updates and related documentation.

Internal consultation with DPIE and DAWE stakeholders (at the Executive and Director level) informed the consultants’ initial evaluation findings. The stakeholders were asked to comment on the effectiveness of the operation of the Agreement, including the focus areas of state assessments, offset approaches and regulatory duplication.

DPIE ran targeted external stakeholder consultation (i.e. with stakeholders outside of DPIE and DAWE) to gauge the effectiveness of the Agreement’s operation.

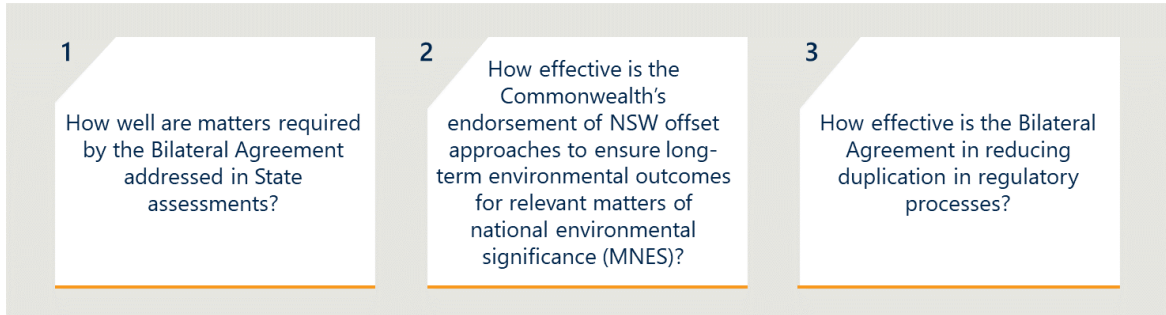
c. Review Report

DPIE and DAWE have created this final Five-Year Review Report using the Nous Group evaluation and input from the targeted external stakeholder consultation.

Following consultation with the relevant NSW Ministers, the Commonwealth Minister will publish the report on the DAWE website.

SECTION 2 – REVIEW FINDINGS

This section will describe how the data from the KPIs and stakeholder consultation answered the three key questions:



Question 1: How well are matters required by the BA addressed in state assessments?

Finding: State assessments are covering relevant MNES as required. The operation of the Agreement is consistent with Australia's statutory requirements to ensure MNES are protected as required under the EPBC Act. Stakeholder consultation largely supported these findings.

The accumulated outcomes of projects assessed under the Agreement indicate how well state assessments address matters required by the Agreement. KPIs 7, 8 and 9 focus on outcomes, in terms of total offsets secured in the required timeframe, total area of MNES habitat impacted and total area secured in offsets. Evaluation of these KPIs for the sample of 21 projects has shown that:

- A total of 2244ha of MNES habitat has been impacted .KPI 8 applies to 11 projects that have commenced development (2 projects have been withdrawn, 1 has no habitat, 7 have not yet commenced).
- A total of 1259ha of offset habitat and 230 credits (equivalent ha) have been secured so far from 4 approvals (KPI 9).
- All projects are within the timeframe to secure offsets, or have already secured the required offsets:
 - 18 % (2/11) projects have secured the required offsets within the timeframe required by the approval; while the remaining 82% (9/11) projects are still within the timeframe to secure the required offsets (KPI 7)
 - 27% (4/15) projects have secured a proportion of their habitat-based offsets (KPI 9).

KPIs 2-5 focus on whether state assessments adequately address EPBC matters required by the Agreement. Analysis of this KPI data has indicated that:

- The Agreement is operating consistently to ensure MNES are protected as required under the EPBC Act. State assessments have explicitly analysed and described the likely impacts on MNES, including identifying the significance of residual adverse impacts and the consistency of the proposed action with relevant policies and guidelines relating to those MNES (KPI 2a 2d, 2e).
- State assessments have adequately assessed MNES, and have given consideration to conservation advice, Recovery Plans, and Threat Abatement Plans.
- 67% (8/12) of the projects provided comments on the effectiveness of the steps proposed to avoid and/or mitigate impacts to MNES (KPI 2).

Stakeholder consultation within DPIE and DAWE, including staff responsible for Australian government assessments, confirmed that state assessments provide enough detail for the Commonwealth decision-maker to make informed decisions, including where further consultation between DPIE and DAWE occurs to clarify issues. Stakeholders emphasised that the strong relationship between DPIE and DAWE is a significant contributor to the effectiveness of state assessments, including access to experts within both governments.

Question 2: How effective is the Commonwealth's endorsement of NSW offset approaches to ensure long-term environmental outcomes for relevant matters of national environmental significance (MNES)?

Finding: State assessments are addressing EPBC matters. Input from internal and external stakeholders also indicate that NSW offset approaches are likely to be contributing to ensuring environmental outcomes for MNES.

A total of 2244ha of MNES habitat has been impacted across 11 projects (reviewed against KPI 8). So far, a total of 1259ha of habitat and 230 credits (equivalent ha) have been secured, in 4 projects (KPI 9). Two projects have secured the required offsets within their timeframe (KPI 7).

All relevant projects identified the total area of MNES habitat that had been impacted, with 92% of projects (12/13 reviewed against KPI 4) providing the Australian Government with information on the methodology used to derive the offset, the nature of the offset and its location (where relevant). All

projects were within the timeframe to secure offsets or have already secured the required offsets, with NSW and Australian Government offsets generally the same.

Nearly half of all projects (6/13 reviewed against KPI 10) used non habitat-based offsets, such as funding for research or educational programs, to meet a portion of their offset liability.

There were no cases where offsetting impacts on MNES triggered a dispute between Parties that required escalation using the dispute resolution process laid out in the Agreement (KPI 6).

Stakeholders broadly supported the effectiveness of NSW offset approaches in ensuring long-term environmental outcomes for MNES, allowing for an advanced and detailed method of protecting MNES, and the Australian Government's endorsement of NSW offset approaches allowing greater flexibility to proponents to secure the required offsets.

Stakeholders viewed the amended Agreement as positive, and some stakeholders also viewed the introduction of the Biodiversity Conservation Trust as positive. Most stakeholders agreed that matters required by the Agreement are addressed well in state assessments, and strongly agreed that NSW offset approaches are effective at ensuring long-term environmental approaches and outcomes for MNES.

Given that so few offsets were secured during the period of the review, it is challenging to draw strong conclusions about the effectiveness of the endorsement of the NSW offset approaches. Additionally, the experience gained in implementing the Agreement over the 5 years since the KPIs were initially drafted has shown that a review of the KPIs would be useful to refine how data on the effectiveness of the Agreement is measured and evaluated, including on the effectiveness of the NSW offset approaches in ensuring outcomes for MNES. It is a recommendation of the review that the governments review the KPIs, so that subsequent reviews can provide a more comprehensive and accurate evaluation of the effectiveness of the endorsement of the NSW offset approaches.

Question 3: How effective is the Bilateral Agreement in reducing duplication in regulatory processes?

Finding: The operation of the Agreement has reduced duplication in regulatory processes. Stakeholders emphasised that the success of the Agreement can be attributed to the strong relationships between DPIE and DAWE, and that the spirit of cooperation and consultation embedded in the aims of the Agreement has had a positive flow-on effect to other non-Bilateral projects and the interactions between DPIE and DAWE.

KPIs 11-13 can indicate how effective the Agreement is in reducing duplication in regulatory processes.

These KPIs apply to 18 of the total 21 projects.

A measure of an efficient assessment is if the Australian Government Minister can make a decision on the basis of the state assessment report and EIS without requiring any other information (KPI 11). In 89% (16/18) of projects, the Australian Government decision-maker made an approval decision without requiring any other information, indicating that the operation of the Agreement is reducing Australian Government effort in making determinations.

Proponents have consistently applied the endorsed offset method, and state assessment reports provide sufficient information to the Australian Government regarding offsets where relevant. All projects described the methodology used to derive the offset, the nature of the offset, and, if relevant, its location.

KPI 12 is the number of statutory days between receipt of the state assessment report and the Australian Government decision. In 16% (3/18) of projects, the Australian Government made an assessment decision within the target 30 business days. DAWE requested no further information from DPIE and applied no additional conditions (KPI 13).

In 39% (7/18) projects, DAWE applied additional conditions to protect MNES not addressed or likely to be addressed by the NSW approval conditions, increasing the assessment decision timeframe beyond the 30 business days. Across all 18 projects, the average period between receipt of the report and an assessment decision was 66 business days. For example, for Oakdale West Industrial Estate the Commonwealth approval required additional non-habitat based offsets to fund a Biodiversity Conservation Action for the affected Cumberland Plain Woodland, an Endangered Ecological Community under the *Threatened Species Conservation Act 1995*. The decision timeframe for this project was 43 days.

DAWE stakeholders noted that more time is spent by the Australian Government in instances where DAWE requests additional information from the proponent prior to making an assessment decision. Reasons for requiring additional information include where the project involved matters considered outside of the NSW assessment, or where complexities and sensitivities related to MNES warrant more consideration i.e. not because the information in the NSW report was insufficient. On occasion DAWE has been unable to prioritise statutory timeframes due to capacity restrictions. Whilst this is not directly attributable to the Agreement process, since the beginning of 2020, as a result of additional funding, timeframes for Australian Government assessment decisions have been met around 99% of the time.

Generally, both internal (DPIE & DAWE) and external (other NSW government) stakeholders noted that there has been a reduction in duplication, and that the Agreement has reduced the effort required on behalf of the proponent and the Australian Government. While stakeholders also noted that Bilateral

Assessments can increase time for DPIE teams to undertake assessments, they also agreed that the additional time spent has improved the presentation of EPBC matters within state assessment reports.

SECTION 4 – RECOMMENDATIONS

In their evaluation, independent consultants, Nous group, identified opportunities to further improve the effectiveness of the Agreement's implementation. (See Appendix C for their full report). DPIE and DAWE consulted with stakeholders on these recommendations and by doing so identified the following priorities:

1. Review the existing KPIs and Monitoring, Evaluation and Reporting (MER) Strategy to ensure they best support and measure the desired environmental and efficiency outcomes. The experience from the past 5 years of implementation of the Agreement has shown that a review of the KPIs could result in better insight into the effectiveness of the operation of the Agreement, through more effective measurement of available data.
2. Clarify roles and educate stakeholders on the Bilateral Assessment process, and review capacity building measures and governance arrangements to ensure the operation of the Agreement is effective, efficient and timely.
3. Explore ways to improve the existing format and content of standard state assessment reports to suit both DPIE and DAWE decision-making processes, to better link how the information is presented in NSW assessment reports and what information is required to support the Commonwealth decision-maker
4. Explore ways to provide greater transparency of mitigation of impacts on MNES, including habitat-based and non-habitat-based offsets through to their retirement. Compare offsets secured against impacts for key species and communities, to ensure that offsets are achieving the desired environmental outcomes.

APPENDIX A – TRANSITIONAL REVIEW

A non-statutory transitional review focused on the parties' progress in implementing the Agreement between 26 February 2015 and 26 February 2017, particularly with regards to:

- Referrals of proposed actions;
- Assessment of MNES;
- Relevant plans, policies and other instruments; and
- Communications and collaborative approaches between the parties.

The review considered the projects that were being assessed under the Agreement during the review period.

The review identified that the parties had made significant progress in implementing the Agreement, resulting in:

- Increased awareness of the parties' obligations under the EPBC Act; and
- Increased consistency and coordination in the issuing of Australian Government and NSW environmental assessment requirements.

The review also identified that there are some aspects of the Agreement's operation that could be improved (Table A1). As can be seen in the table, many of the areas for improvement are being addressed through the BIF, including the Monitoring Evaluation and Reporting Strategy and Assessment Support Strategy.

Table A1 | Transitional review - Priority initiatives for improvement

Priority initiatives for improvement	Action to date
Cooperative approach to referrals	
<ul style="list-style-type: none"> • NSW to consider approaches to increasing proponents' awareness of potential obligations under the EPBC Act particularly in the early stages of the development application process. 	Addressed through SEARs templates
<ul style="list-style-type: none"> • NSW to develop guidance material for proponents to highlight the cost benefits of utilising the single assessment process under the Agreement, and the importance of timing in relation to referrals. 	Not applicable – guidance material for proponents not required since the single assessment process is automatic for projects in the NSW system that are referred to the AG
<ul style="list-style-type: none"> • NSW to finalise revised internal guidance material, including procedures and checklists, to ensure referral and notification requirements are met in a timely manner and with the least number of administrative steps. 	Addressed through BIF
<ul style="list-style-type: none"> • NSW to ensure guidance material and procedures are adopted widely and consistently across the assessment teams. 	NSW increased resourcing to further guide and build capacity in assessment teams

Priority initiatives for improvement	Action to date
<ul style="list-style-type: none"> The Commonwealth and NSW to identify improved processes for early engagement with proponents to ensure alignment of the NSW and Commonwealth assessment timeframes such that the Agreement can apply. 	Addressed through SEARs templates
Assessment	
<ul style="list-style-type: none"> The Commonwealth and NSW to work together to update operating procedures to ensure relevant assessment officers in both DPE and OEHL receive referral documentation as early as possible in the process. 	Addressed through BIF
<ul style="list-style-type: none"> The Commonwealth and NSW to work towards increasing proponents' understanding of the EPBC Act's requirements for explicit assessment of relevant impacts on each MNES. 	Addressed through SEARs templates
<ul style="list-style-type: none"> The Commonwealth and NSW to identify key actions to support a transition to business as usual. 	Addressed through BIF
<ul style="list-style-type: none"> The Commonwealth and NSW to ensure prompt and accurate communication regarding how controlled actions are assessed under the EPBC Act and the finalisation of NSW Assessment Reports, to reduce delays in progressing with assessments and approval decisions. Compliance with Schedule 1 of the Agreement to ensure MNES are addressed in the assessment under the NSW process such that statutory requirements under the EPBC Act are met. 	Addressed through BIF
<ul style="list-style-type: none"> NSW's assessment officers' level of understanding in relation to the assessment requirements for projects subject to the Agreement, to ensure they are able to prepare supplementary environmental assessment requirements and assessment reports without Commonwealth assistance. 	Addressed through BIF (DAWE Assessment Officer training)
<ul style="list-style-type: none"> The Commonwealth and NSW to develop procedural guidelines for identifying, assessing and seeking advice from the Independent Expert Scientific Committee (IESC) on Coal Seam Gas and Large Coal Mining Development. 	Addressed through BIF
<ul style="list-style-type: none"> NSW to ensure assessment checklists include a reminder for assessment staff to review all environment impact statements prior to publication, to ensure the proponent has provided the necessary level of detail in relation to impacts on each MNES in accordance with the supplementary SEARs. 	Done (APP 1.9 – Assessment in accordance with the Bilateral Agreement)
<ul style="list-style-type: none"> NSW to maintain records of projects for which expert advice is sought from IESC and/or other expert bodies, to facilitate ongoing monitoring. 	Done
Relevant plans, policies and other instruments	
<ul style="list-style-type: none"> The Commonwealth and NSW to develop procedural guidelines for assessing and determining applications involving residual significant impacts on MNES. 	Addressed through BIF
<ul style="list-style-type: none"> NSW to ensure more transparency around how the FBA has been applied to MNES and meets the standards of the EPBC Act. 	Addressed through BIF
<ul style="list-style-type: none"> NSW to ensure due consideration and/or implementation of relevant plans, policies and other instruments to ensure the environmental outcomes from approved projects meet the Commonwealth's standards. 	Done (APP 1.9 – Assessment in accordance with the Bilateral Agreement)
<ul style="list-style-type: none"> NSW to work towards increasing assessment officers' level of understanding in relation to requirements for offsets (particularly where migratory species are being impacted), to ensure they are 	Addressed through BIF (DAWE Assessment Officer training)

Priority initiatives for improvement	Action to date
<p>able to assess whether the proponent has met these requirements, with limited assistance from the Commonwealth.</p>	
<p>Communications, reporting and collaborative approaches</p>	
<ul style="list-style-type: none"> The Commonwealth and NSW will provide information on the operation of bilateral assessments on their websites. In particular, this should include information on how to identify and characterise Commonwealth listed threatened species and communities in such a way that offset liabilities can be calculated wherever possible using the BioBanking methodology. 	<p>Ongoing</p>
<ul style="list-style-type: none"> NSW will ensure procedures adopted to support the implementation of the Agreement provide for efficient and effective data collection and monitoring and reporting, including against key performance indicators. 	<p>Addressed through BIF (MER Strategy)</p>
<ul style="list-style-type: none"> NSW is currently upgrading its Disability Inclusion Action Plan to increase accessibility among persons with disabilities including visual and auditory impairments, as well as particular needs groups such as those with cognitive and learning disabilities. This will include specific provisions for public consultation sessions, for example mobility impaired persons. 	<p>Done</p>
<ul style="list-style-type: none"> The Commonwealth and NSW to identify opportunities to improve information sharing regarding compliance and enforcement matters. 	<p>Ongoing</p>
<p>Administrative arrangements</p>	
<ul style="list-style-type: none"> The Commonwealth and NSW to review the Administrative Arrangements to ensure they provide an appropriate level of guidance for assessment officers, particularly with regards to information sharing with the Commonwealth. 	<p>Done</p>

APPENDIX B – PROJECTS ANALYSED FOR THIS REVIEW

Table B1 lists the 21 projects analysed for this review. These projects have been determined through a Bilateral Assessment. Projects currently being assessed are not included.

Table B1 | List of projects analysed for this review

#	Name	LGA	Cap Inv \$m	Jobs (Construction & Operational)
1	Drayton South Coal Mine	Muswellbrook	139.89	40
2	Cowal Gold Operations Mod 14	Bland		80
3	Gunlake Quarry Extension	Goulburn Mulwaree	3.2	27
4	Haerses Road Quarry Mod 1	The Hills		4
5	Liverpool Range Windfarm	Mid-Western, Upper Hunter, Warrumbungle	1,080.00	220
6	Newcastle Inner City Bypass	Newcastle	280.00	800
7	Oakdale West Industrial Estate	Penrith	447.07	2910
8	Sapphire Solar	Inverell	280.00	210
9	Sydney Opera House	City of Sydney	115.34	570
10	United Wambo Coal Mine	Singleton	381.18	312
11	Westconnex New M5	Bayside, Canterbury Bankstown, Georges River, Inner West, Sydney	4,000.00	1600
12	Wilpinjong Coal Mine	Mid-Western	101.02	725
13	Wollar Solar	Mid-Western Regional	431.41	325
14	Bylong Coal Mine	Mid-Western	1,577.80	1270
15	Jupiter Windfarm	Goulburn Mulwaree	380.50	368
16	Airly Coal Mine	Lithgow	86.63	106
17	Inland Rail – Parkes to Narromine	Narromine, Parkes	313.67	530
18	Moolarben Coal Mods	Mid-Western		
19	Peppertree Quarry Mod 5	Goulburn Mulwaree	1.50	20
20	Wambo Mod 12	Singleton	651.86	250
21	Wambo Mod 17	Singleton		

APPENDIX C – NOUS GROUP REPORT