



Northern Territory
Government

COMMONWEALTH OF AUSTRALIA

THE NORTHERN TERRITORY

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 Northern Territory of Australia
(**NTA**)



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Details

Parties

1. The Minister for the Environment for and on behalf of the Commonwealth of Australia (the **Commonwealth**).
2. The Northern Territory of Australia (the **NTA**).

Background

- A. Under the Intergovernmental Agreement on the Environment 1992 and Council of Australian Governments' Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment 1997, the parties to those agreements committed to working together across shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and the NTA 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 the NTA are jointly committed to maintaining high environmental standards and working together to streamline environmental assessment by this Agreement. This is about setting the highest standards, making swift decisions and delivering certain outcomes.
- 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 of controlled actions; and
 - d. minimise duplication in the environmental assessment and approval processes of the Commonwealth and the NTA.
- E. This Agreement provides for the accreditation of the NTA 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 the NTA.
- F. This Agreement will therefore enable the Commonwealth to rely on the NTA assessment processes set out in Schedule 1 for assessment of controlled actions under the EPBC Act. In addition, and where appropriate, the parties will work together so that conditions attached to Commonwealth approvals are limited to matters not addressed, or likely to be addressed by the NTA conditions of approval.
- 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 the NTA, as amended from time to time, and includes its Schedule(s).
Assessment Report	a report prepared by the NT EPA and provided to the NT Minister under section 64 of the EP Act, in relation to a controlled action that is assessed under this Agreement and may include Information accompanying that report.
Commencement Date	the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so.
Commonwealth Minister	the Minister administering the EPBC Act and, except in relation to clauses 12, 13 and 14, includes a delegate of the Minister.
Department	the Commonwealth Department of Agriculture, Water and the Environment, or any other Commonwealth agency that administers this Agreement from time to time.
EP Act	the <i>Environment Protection Act 2019</i> (NT).
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
EPBC Regulations	the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (Cth).
EP Regulations	the <i>Environment Protection Regulations 2020</i> (NT).
Information	includes data.
Item	an item of Schedule 1.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government and includes the common law and rules of equity as applicable from time to time.
Matter of NES	a matter protected by a provision of Division 1 of Part 3 of the EPBC Act.

NTA Law	a Law of the Northern Territory of Australia.
NT EPA	the Northern Territory Environment Protection Authority established by the <i>Northern Territory Environment Protection Authority Act 2012</i> (NT).
NT Minister	the Northern Territory Minister administering the EP Act and, except in relation to clauses 12, 13 and 14, includes a delegate of the Minister.
Previous Bilateral Agreement	the bilateral agreement dated 11 December 2014 between the Commonwealth and the NTA relating to the environmental assessment of controlled actions.
Schedule	a schedule to this Agreement.
Supervising Scientist	the Supervising Scientist for the Alligator Rivers Region established by the <i>Environment Protection (Alligator Rivers Region) Act 1978</i> (Cth).
Territory	the area within the geographical boundary of the Northern Territory of Australia.

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by meaning of, 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 and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a reference to NTA Law is a reference to the relevant Law as in force at the Commencement Date; and
- (h) 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 References to the NT Minister or NT EPA

Where a Provision purports to impose an obligation or duty on either the NT Minister or NT EPA, the NTA must ensure that the NT Minister or NT EPA (as applicable) complies with that obligation or duty.

1.4 Priority of Agreement documents

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

- (a) the Details and Provisions of this Agreement;
- (b) a Schedule; then
- (c) Administrative Arrangements.

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 Declaration

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 controlled action is in the class of actions specified in Schedule 1.

4.2 Scope

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

- (i) a controlled action in a Commonwealth area;
- (ii) where a controlled action is not wholly within a Commonwealth area – that part of the action that is in a Commonwealth area;
- (iii) a controlled action taken by the Commonwealth or a Commonwealth agency; or
- (iv) a controlled action in Kakadu National Park or Uluru-Kata Tjuta National Park.

Note: Clause 4.2(c) does not affect the ability of the NTA to assess actions outside Kakadu National Park or Uluru-Kata Tjuta National Park that may have a downstream impact on those areas.

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

- (a) Subject to clause 4.3(b), the Commonwealth Minister may determine that a particular controlled action is not within a class of actions to which clause 4.1 applies.
- (b) The Commonwealth Minister cannot, without the prior written agreement of the NT Minister, make the determination referred to in clause 4.3(a) after the NT EPA has given notice to the Commonwealth Minister under clause 5.4 that the particular controlled action will be assessed in a manner specified in Schedule 1.

4.4 Previous Bilateral Agreement and transitional arrangements

- (a) The Previous Bilateral Agreement is revoked from the Commencement Date and replaced by this Agreement.
- (b) A class of actions specified in Schedule 1 includes a controlled action that is in a class of actions specified in Schedule 1 to the Previous Bilateral Agreement, where:
 - (i) the NT Minister has indicated in a written notice to the Commonwealth Minister that the controlled action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement;
 - (ii) the relevant assessment process for that controlled action had not been completed before the revocation of the Previous Bilateral Agreement; and
 - (iii) section 296 of EP Act applies to the assessment of that controlled action.

5. Procedures for referral

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

The NTA 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 the NTA on whether the action will be assessed in a manner specified in Schedule 1; and

- (b) the NTA must ensure that the proponent and the Commonwealth Minister are advised of that decision.

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

The Commonwealth Minister must notify the NT EPA of every action that:

- (a) is proposed to be taken in the Territory; 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 NT EPA that an accredited process will apply

Where:

- (a) the Commonwealth Minister has notified the NT EPA that an action proposed to take place in the Territory is a controlled action; and
- (b) the controlled 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 NT EPA must, within 10 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.

5.5 Notification by NT EPA 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 **Error! Reference source not found.** applies, during the period from the date that the NT EPA 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 NTA provides the final Assessment Report referred to in clause 6.71.1(a) to the Commonwealth Minister in respect of that controlled action.
- (b) The NT EPA 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;
 - (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) a new method of environmental assessment is decided for the controlled action, with such notice to set out the date from which the new method of environmental assessment took effect, and the reasons for changing the method of environmental assessment.

6. Assessment

6.1 Statutory undertaking

- (a) Where a controlled action:
- (i) is covered by the declaration in clause 4.1; and
 - (ii) is an action:
 - (A) taken or proposed to be taken in the Territory by a constitutional corporation;
 - (B) taken by a person in the Territory 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;
 - (C) taken in the Territory and whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries, or
 - (D) taken or proposed to be taken in the Territory,
- the NTA 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 an impact of a controlled action is assessed to the 'greatest extent practicable' under clause 6.1(a) if it has been assessed in accordance with the manner of assessment specified in Item 2.1(a) of Schedule 1 for the for the class of actions that includes that action.

6.2 Proponent service delivery charter

For appropriate controlled actions, the parties agree to determine at the commencement of the assessment process key deliverables, assessment methodologies, milestones, and contact personnel for each party. To this end, the parties agree to establish a joint proponent service delivery charter for each of these controlled actions in the manner set out in the Administrative Arrangements.

6.3 Single assessment

In determining the assessment approach for a controlled action, the NTA must ensure that the chosen assessment approach will allow the Commonwealth Minister to have sufficient Information to make an informed decision whether or not to approve the controlled action and, if so, under what conditions. In particular, the NTA must ensure that the chosen assessment approach will allow for an Assessment Report to be prepared for the controlled action and provided to the Commonwealth Minister, that satisfies the requirements of Item 3.6 of Schedule 1.

6.4 Seeking expert advice

- (a) If the taking of a controlled action:
- (i) involves coal seam gas development or large coal mining development; and
 - (ii) is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity,

to enable the Commonwealth Minister to efficiently proceed to a decision consistent with section 131AB of the EPBC Act, the NTA will:

- (iii) jointly with the Commonwealth, obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development; and
 - (iv) 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 Coal Seam Gas and Large Coal Mining Development.
- (b) The NTA may seek advice on relevant matters from other expert advisory bodies established under the EPBC Act or from Commonwealth agencies with relevant expertise, with details to be set out in the Administrative Arrangements.
- (c) The parties agree that advice will be sought from the Supervising Scientist in relation to uranium or thorium in accordance with the Memorandum of Understanding between the Commonwealth and the NTA in relation to working arrangements for the regulation of uranium mining in the Territory (the MoU) and will be taken into account once provided. The parties also agree that non-binding advice of the Supervising Scientist may be sought by the NTA, and the Supervising Scientist will provide such advice, concerning relevant matters not subject to the MoU in relation to nuclear actions in the NTA.

6.5 Efficiency and effectiveness

The parties agree to take steps to improve the efficiency and effectiveness of administrative processes to the greatest extent possible. This will include, but is not limited to the use of:

- (a) greater up-front guidance to industry;
- (b) common streamlined generic terms of reference for assessments;
- (c) standard outcome-focused conditions;
- (d) increased data sharing across governments and provision of industry data from assessment documentation to the public; and
- (e) project control and monitoring mechanisms.

6.6 Consultation on Assessment Report

Before provision of the Assessment Report by the NT EPA to the NT Minister, the parties will use their best endeavours to agree, to the greatest extent possible, on common outcome-focussed recommendations.

6.7 Provision of Assessment Report to the Commonwealth Minister

- (a) When a controlled action is assessed in the manner specified in Schedule 1, the NTA will ensure that the Commonwealth Minister is provided with:
 - (i) a copy of any environmental impact statement, supplementary environmental report, inquiry report or inquiry panel report; and
 - (ii) the final Assessment Report (or any parts of the Assessment Report addressing the relevant impacts of the action on Matters of NES) that:
 - (A) satisfies the requirements of this Agreement, including Item 3.6 of Schedule 1; and

- (B) contains the recommendation to the NT Minister regarding the determination of the relevant application in relation to the action, including any recommended conditions to manage impacts on Matters of NES.
- (b) The NTA will ensure that at the same time as the Commonwealth Minister is provided with the final Assessment Report (or relevant parts of the Assessment Report) under clause 6.7(a), the Commonwealth Minister is also provided with:
 - (i) a copy of the NTA decision, and if relevant, approval conditions that apply;
 - (ii) a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the controlled action;
 - (iii) any other Information available to or used by the NT Minister in the decision-making process; and
 - (iv) as far as practicable, any other Information relevant to the action as soon as the Information becomes available.
 - (c) The NTA may, when it provides the final Assessment Report referred to in clause 6.7(a) provide to the Commonwealth Minister 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 legislative requirement).

6.8 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 NTA and the NT EPA.
- (b) The Commonwealth Minister agrees to give the NTA and NT EPA an opportunity to comment on the accuracy of any Information referred to in clause 6.78(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.

6.9 Relevant plans and policies

When preparing Assessment Reports on relevant impacts under this Agreement, the NTA agrees to take into account as far as practicable, relevant guidelines, policies and plans, including where relevant:

- (a) the Commonwealth EPBC Act Environmental Offsets Policy. Where offsets are identified as necessary only to meet Commonwealth EPBC Act Environmental Offsets Policy requirements, they may 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) any management plan for a declared World Heritage property, a National Heritage Place or a declared Ramsar wetland; and
- (d) 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).

7. Transparency and access to Information

7.1 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 NTA will ensure that proponents:
 - (i) take all reasonable steps to obtain the views of any group of Indigenous people directly affected by the taking of a controlled action that is assessed under this Agreement if that controlled action is likely to have a significant impact on a Matter of NES that relates to that group's Indigenous cultural heritage or, that will occur on or directly affect land subject to that group's native title rights and interests; and
 - (ii) where appropriate, treat the views of Indigenous peoples as the primary source of Information on the value of Indigenous cultural heritage.

7.2 Public access – generally

The NTA will ensure that documentation about each assessment of a controlled action made in accordance with Schedule 1 will be available to the public, subject to any appropriate statutory or NTA policy exemptions that would be available if the assessment was undertaken under Part 8 of the EPBC Act by the Commonwealth (including commercial-in-confidence Information and Information that is critical to the protection of a Matter of NES).

7.3 Public access – particular needs groups

- (a) The NTA will, in providing public access to assessment documentation, make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to:
 - (i) comment on controlled actions assessed in the manner specified in Schedule 1; and
 - (ii) comment on, and otherwise access, assessment documentation for such controlled actions.

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; or who, because of a disability, have difficulty accessing paper documentation or using a computer.

- (b) The parties note that Indigenous people affected by a controlled action may have particular communication needs, and NTA will make arrangements to ensure that affected Indigenous people have reasonable opportunity to comment on controlled actions assessed in a manner specified in Schedule 1.
- (c) The parties note that the following processes may apply in relation to consultation with Indigenous people in the Territory:
 - (i) the proponent may be required to comply with obligations to consult with Indigenous people under the *Native Title Act 1993 (Cth)* or the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*;

- (ii) the proponent may be required to comply with obligations to consult with Indigenous people under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT); and
- (iii) the advice of the relevant Land Council may be sought regarding the adequacy of any consultation carried out by a proponent with Indigenous people in relation to a controlled action.

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 approvals for a controlled action assessed under this Agreement and NTA Law.
- (b) To this end, the parties:
 - (i) note the provisions of section 134 of the EPBC Act, which include a requirement for the Commonwealth Minister to consider any relevant conditions that have been or are likely to be imposed under a NTA Law on the taking of the controlled action when deciding whether to attach a condition to an approval;
 - (ii) will use their best endeavours to consult on the:
 - (A) NT EPA recommendations; and
 - (B) the conditions proposed to be attached to an approval by the Commonwealth under the EPBC Act;
 - (iii) will use their best endeavours to inform the other of any conditions attached to an approval(s) to take an action assessed under this Agreement;
 - (iv) will use their best endeavours to inform one another before varying conditions attached to an approval for an action, where the condition controlled relates to, or affects, a matter protected by Part 3 of EPBC Act for the purposes of seeking comment about those changes; and
 - (v) will use their best endeavours 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

Where an action:

- (a) is taken in the Territory;
- (b) requires the approval of the Commonwealth Minister under Part 9 of the EPBC Act; and
- (c) requires approval (however described) under NTA Law,

the parties agree to cooperate, as far as practicable, 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;
- (c) which may include guidelines on the exchange of Information for the purpose of clause 9.3;
- (d) which will allow proponents to simultaneously satisfy both requirements under the EPBC Act and relevant NTA Law; and
- (e) that otherwise provide for the implementation of this Agreement.

9.2 Senior officers' committee

- (a) The Administrative Arrangements will detail and provide for the establishment of a senior officers' committee to oversee the implementation of this Agreement.
- (b) The senior officers' committee will meet at least twice every 12 months after the Commencement Date.
- (c) Terms of reference for the senior officers' committee will be set out in the Administrative Arrangements.

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) 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 any 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, NTA 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) In particular, the Commonwealth undertakes to consult with and actively engage the NTA at an early stage in regard to the development of proposals for, and the development of, or amendment to, any guidance documents that impact the operation of this agreement with the aim of ensuring that to the extent of any impact the guidance documents or amendments thereto are mutually agreed.
- (c) 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 species and ecological communities, including those documents expressly set out in clause 6.9; 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 the NTA, 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 under clause 9.1 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 2000* (Cth) and give a copy of the report of each review to the NTA.

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) at senior officials' level, between officers of the senior officers' committee established under clause 9.2;
 - (B) between the Secretary of the Department and the equivalent NTA official; and
 - (C) correspondence between the Commonwealth Minister and the NT 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 NT Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister to cancel or suspend all or part of this Agreement if the NT Minister requests a notice of cancellation or suspension in accordance with this Agreement.

- (b) A request by the NT 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 NT Minister is not satisfied that the Commonwealth has complied or will comply with this Agreement;
 - (ii) on the grounds that the NT Minister is not satisfied that the objects of this Agreement are being achieved; or
 - (iii) on other grounds that the NT Minister considers appropriate, and before making the request, the NT 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 consult with the NT Minister to seek agreement on the wording of the amendment.

14.3 Amendment of legislation

If the EPBC Act or any other relevant Law, including any relevant NTA Law, is amended, or proposed to be amended, in a manner that would affect the operation of this Agreement, each party agrees to promptly notify the other party 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 address notified by the relevant party from time to time.

16.3 Disclosure of Information

Notwithstanding any other provision of this Agreement:

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

Schedule 1 – Declared class of actions

1. Preamble

- (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, for the purposes of the declaration in 4.1 of this Agreement, the classes of actions are:
 - (i) actions that are assessed by the NT EPA under section 57 of the EP Act and Division 4 of Part 5 of the EP Regulations, whether or not the assessment also includes an assessment by inquiry under Division 7 of Part 5 of the EP Regulations;
 - (ii) actions that are assessed by the NT EPA under section 57 of the EP Act and Division 5 of Part 5 of the EP Regulations, whether or not the assessment also includes an assessment by inquiry under Division 7 of Part 5 of the EP Regulations;
 - (iii) actions that are assessed by the NT EPA under section 57 of the EP Act and Division 6 of Part 5 of the EP Regulations, whether or not the assessment also includes an assessment by inquiry under Division 7 of Part 5 of the EP Regulations; and
 - (iv) actions that are assessed by the NT EPA under section 57 of the EP Act and Division 7 of Part 5 of the EP Regulations, and which are not assessed by any other method of environmental impact assessment under the EP Regulations,where the assessment has been undertaken in accordance with the requirements of Item **Error! Reference source not found.**
- (b) For the purposes of regulation 3.02 of the EPBC Regulations, the manner of assessment specified:
 - (i) in each of Items 2.1(a)(i) and 2.1(a)(ii), is taken to correspond to assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act;
 - (ii) in Item 2.1(a)(iii), is taken to correspond to assessment by environmental impact statement under Division 6 or Part 8 of the EPBC Act; and
 - (iii) in Item 2.1(a)(iv), is taken to correspond to assessment by inquiry under Division 7 of Part 8 of the EPBC Act.
- (c) A reference in Item 2.1(a) to an 'action' includes an action that is proposed by a referred strategic proposal (as that term is defined in the EP Regulations).

2.2 Excluded actions

A class of actions described in Item 2.1(a) does not include:

- (a) actions which have been:
 - (i) determined to be a controlled action pursuant to section 75 of the EPBC Act prior to the Commencement Date; or
 - (ii) prescribed under subsection 25(1) of the EPBC Act; or
- (b) actions consisting of or involving the construction or operation of any of the following nuclear installations:
 - (i) a nuclear fuel fabrication plant;
 - (ii) a nuclear power plant;
 - (iii) an enrichment plant;
 - (iv) a reprocessing facility.

3. Additional assessment requirements

3.1 Overview

Any controlled action that is subject to this Agreement and within a class of actions set out in Item 2.1(a), must also be subject to the additional requirements set out in Items 3.2 to 3.6, unless a particular requirement in those Items is stated to apply to one or more classes of actions that do not include the controlled action.

3.2 Selection of assessment approach

- (a) In deciding the required method of environmental impact assessment under the EP Regulations, the NT EPA must consider criteria equivalent to the criteria set out in the guidelines (if any) issued under section 87(6) of the EPBC Act to the extent relevant to the decision.
- (b) A controlled action may only be assessed in accordance with a class of actions described in Item 2.1(a)(i) or 2.1(a)(ii) if:
 - (i) the Commonwealth Minister has been given an opportunity to ask that another assessment approach be used, and the Commonwealth Minister has not done so; or
 - (i) the Commonwealth Minister has agreed in writing that the assessment approach be used.

3.3 Assessment documentation

- (a) For the class of actions specified in Item 2.1(a)(i), the documents mentioned in regulation 51 of the EP Regulations must have included a description of:
 - (i) the proposed action;
 - (ii) the likely relevant impacts of the action, as defined in section 82 of the EPBC Act, and included an assessment of those impacts;
 - (iii) to the extent practicable, any feasible alternatives to the proposed action that could avoid or reduce relevant impacts; and
 - (iv) possible mitigation measures.

- (b) For the class of actions specified in Item 2.1(a)(ii), the NT EPA must have directed the proponent under regulation 119(2) of the EP Regulations to include in the supplementary environmental report a description of:
 - (i) the proposed action;
 - (ii) the likely relevant impacts of the action, as defined in section 82 of the EPBC Act, and an assessment of those impacts;
 - (iii) to the extent practicable, any feasible alternatives to the proposed action that could avoid or reduce relevant impacts; and
 - (iv) possible mitigation measures.
- (c) For the class of actions specified in Item 2.1(a)(iii), the terms of reference applied by the NT EPA in carrying out the assessment by environmental impact statement under Division 6 of Part 5 of the EP Regulations must have been:
 - (i) prepared by the NT EPA;
 - (ii) designed to ensure that material prepared by the proponent as part of the assessment:
 - (A) contains an assessment of all relevant impacts that the action has, will have or is likely to have;
 - (B) contains enough information about the action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the action under the EPBC Act; and
 - (C) addresses the matters outlined in Schedule 4 of the EPBC Regulations.

3.4 Public comment

- (a) For the class of actions specified in Item 2.1(a)(i) and 2.1(a)(ii), the assessment documentation provided to the NT Minister must include a written response, which summarises or takes into account the issues raised by the public in submissions made during the period that:
 - (i) for the class of actions specified in Item 2.1(a)(i), the documents mentioned in regulation 51 of the EP Regulations were publicly exhibited under regulation 52 of the EP Regulations; and
 - (ii) for the class of actions specified in Item 2.1(a)(ii), the supplementary environmental report was publicly exhibited under regulation 122 of the EP Regulations.
- (b) When the public is invited under the EP Regulations to comment on terms of reference or draft assessment documentation, the invitation must be published (at a minimum):
 - (i) for all classes of action, on the NT EPA website and linked to the Department's website; and
 - (ii) for the class of actions specified in Item 2.1(a)(iii) and 2.1(a)(iv), in a newspaper circulating generally in each State and Territory.
- (c) The advertisements must advise the name of the action, a brief description of the action, its location(s), the relevant Matters of NES, the name of the person intending to take the action, the name of the designated proponent (if not the person intending to take the controlled action), how the relevant documents may be obtained, and the deadline for public comments.

3.5 Assessment by inquiry

- (a) This Item 3.5 applies only to the class of actions specified in Item 2.1(a)(iv).
- (b) The NT EPA must have appointed a panel to assist the inquiry under regulation 150(1) of the EP Regulations.
- (c) The terms of reference that are required by regulation 149(2) of the EP Regulations to be applied in conducting the inquiry, must have been designed to ensure that the inquiry:
 - (i) assesses all relevant impacts that the action has, will have or is likely to have; and
 - (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.
- (d) The persons appointed to form the panel to assist the inquiry must be independent and have sufficient power to investigate the action adequately.

3.6 Assessment Report

- (a) The Assessment Report must be prepared for each action that is assessed, or if an inquiry is held, the persons holding the inquiry must prepare an inquiry panel report, which takes into account:
 - (i) the information in the assessment documentation;
 - (ii) any other relevant information available to the NT EPA or inquiry panel.
- (b) The Assessment Report or inquiry panel report must also include:
 - (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) a separate chapter or part dealing with all relevant impacts on Matters of NES. 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 declared World Heritage property;
 - (B) the National Heritage values of a National Heritage place;
 - (C) the ecological character of a declared 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) the environment, in relation to nuclear actions;
 - (G) a water resource, in relation to coal seam gas or large coal mining developments;
 - (H) the environment in the Commonwealth marine area (for actions outside the Commonwealth marine area that may impact the environment in the Commonwealth marine area); and
 - (I) Commonwealth land (for actions outside Commonwealth land that may impact on the environment on Commonwealth land);

- (iii) where a declared World Heritage property is likely to be affected by the action, a description of why the taking of the action would not be inconsistent with:
 - (A) Australia's obligations under the World Heritage Convention; or
 - (B) the Australian World Heritage management principles; or
 - (C) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321 of the EPBC Act;
- (iv) where the National Heritage values of a National Heritage place are likely to be affected by the action, a description of why the taking of the action would not be inconsistent with:
 - (A) the National Heritage management principles;
 - (B) an agreement to which the Commonwealth is party in relation to a National Heritage place; or
 - (C) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X of the EPBC Act;
- (v) where the ecological character of a declared Ramsar wetland is likely to be affected by an action, a description of why the taking of the action would not be inconsistent with:
 - (A) Australia's obligations under the Ramsar Convention; and
 - (B) will promote the management of the wetland in accordance with the Australian Ramsar management principles.
- (vi) where a listed threatened species (except a conservation dependent species) or their habitat, or any listed threatened ecological communities is likely to be affected by an action, a description of why the taking of the action would not be inconsistent with:
 - (A) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (B) a recovery plan or threat abatement plan;
- (vii) where a member of a listed migratory species or their habitat is likely to be affected by an action, a description of why the taking of the action would not be inconsistent with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:
 - (A) the Bonn Convention;
 - (B) CAMBA;
 - (C) JAMBA;
 - (D) an international agreement approved under subsection 209(4) of the EPBC Act;
- (viii) a description of feasible mitigation measures, changes to the controlled action or procedures, which have been proposed by the proponent or

suggested in public submissions, and which are intended to prevent or minimise relevant impacts of the action;

- (ix) to the extent practicable, a description of any feasible alternatives to the controlled action that have been identified through the assessment, and their likely impact on each Matter of NES;
- (x) 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;
- (xi) where feasible, a statement of NTA approval requirements and conditions that apply, or are recommended to apply, to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are recommended to apply, to the action; and
- (xii) the Information and opinion on which the assessment is based, or its source.

Execution page

EXECUTED as an agreement

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



The Hon Sussan Ley MP

Minister for the Environment

25th October 2021

Date

SIGNED for and on behalf of the Northern
Territory of Australia by:



The Hon Eva Lawler MLA

Minister for Environment

15/9/21

Date