



COMMONWEALTH OF AUSTRALIA

STATEMENT OF REASONS

**Agreement between the Commonwealth of Australia
and Victoria under section 45 of the
Environment Protection and Biodiversity Conservation Act 1999 (Cth)
relating to environmental assessment**

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

Legislation

Section 45 of the EPBC Act relevantly provides:

Making bilateral agreement

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

What is a bilateral agreement?

- (2) A **bilateral agreement** is a written agreement between the Commonwealth and a State or a self-governing Territory that:

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

Publishing notice of intention to enter into agreement

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

Publishing bilateral agreements and related material

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

Section 47 of the EPBC Act relevantly provides:

Declaration of actions that do not need further assessment

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

Prerequisite to declaration

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

Assessment approaches that may be accredited

- (3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:
 - (a) assessment by any person under a law of the State or Territory; and
 - (b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and
 - (c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.

This does not limit subsection (1).

Report on actions that do not need further assessment

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

Section 48 of the EPBC Act relevantly provides:

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

Consistency with Act and regulations

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

Relationship with sections 46 and 47

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

Section 48A of the EPBC Act relevantly provides:

Application

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

Agreements including declarations about assessment

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

Auditing

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

Section 49 of the EPBC Act relevantly provides:

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

Section 49A of the EPBC Act provides:

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

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

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

Section 50 of the EPBC Act provides:

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

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

Section 51 of the EPBC Act relevantly provides:

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

Section 51A of the EPBC Act relevantly provides:

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

Section 52 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and

- (b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
- (c) the provision meets the requirements (if any) prescribed by the regulations.

Section 53 of the EPBC Act relevantly provides:

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
 - (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
 - (c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
 - (ca) the Minister has had regard to any approved conservation advice for the species or community; and
 - (d) the provision meets the requirements (if any) prescribed by the regulations.

Section 54 of the EPBC Act relevantly provides:

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

Section 55 of the EPBC Act relevantly provides:

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

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

Section 56 of the EPBC Act provides:

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

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

Background

Development of a new bilateral agreement

1. The Australian Government's 'One-Stop Shop' policy intends to accredit state and territory planning systems under national environmental law, to create a single approval process that satisfies both state or territory and Commonwealth requirements. Implementation involves three stages: signing Memoranda of Understanding, updating or agreeing new assessment bilateral agreements, and entering approval bilateral agreements.
2. The Agreement is a new assessment bilateral agreement I have entered, under section 45 of the EPBC Act, between the Commonwealth and Victoria.
3. This Agreement will replace the previous assessment bilateral agreement between the Commonwealth and Victoria which was entered into in April 2009.
4. On 19 December 2013, I signed a Memorandum of Understanding (MoU) with Victoria setting out the agreed arrangements that will be pursued by the Commonwealth and Victoria to deliver a 'One-Stop Shop' for environmental approvals under the EPBC Act.

5. On 19 December 2013, I published a notice of my intention to develop a draft assessment bilateral agreement with Victoria in the *Age*, pursuant to section 45(3) of the EPBC Act. On 20 December 2013, I published a notice of my intention to develop a draft assessment bilateral agreement with Victoria in the *Government Gazette*, pursuant to section 45(3) of the EPBC Act.

Consultation

6. On 5 September 2014, a draft of the Agreement was published with an invitation for any person to comment by 3 October 2014 (28 days), in accordance with section 49A(a) of the EPBC Act.
7. The Department received ten submissions, all of which I took into account in making my decision to enter into the Agreement, in accordance with section 49A(b) of the EPBC Act.
8. The comments, along with a report on the comments, will be published on the Department of the Environment website, in accordance with section 45(4) of the EPBC Act.

The effect of the Agreement

9. The Agreement provides for the accreditation of the Victorian environmental assessment processes set out in Schedule 1 of the Agreement to ensure an integrated and coordinated approach for assessment of actions requiring approval from both the Commonwealth Environment Minister and Victoria. The Agreement minimises duplication of environmental assessment processes, provides more efficient and effective environmental assessment processes, strengthens intergovernmental cooperation and promotes a partnership approach to environmental protection and biodiversity conservation. It is therefore a bilateral agreement within the meaning of section 45(2) of the EPBC Act.
10. In accordance with section 47(1) of the EPBC Act, a bilateral agreement may declare that actions in a class of actions that have been assessed in a specified manner need not be assessed under Part 8 of the EPBC Act.
11. Clause 4.1 of the Agreement contains a declaration that an action in the class of actions specified in Schedule 1 of the Agreement does not require assessment under the EPBC Act.
12. Item 2.1 of Schedule 1 to the Agreement specifies the class of actions according to Victorian law under which the assessment of each action in the class of actions is carried out. The classes of action are as follows:
 - a. actions that are assessed under Part 3 of the *Major Transport Projects Facilitation Act 2009* (Vic) and in accordance with Item 3 of Schedule 1 to the Agreement;
 - b. actions that are assessed by an Environment Effects Statement process under the *Environment Effects Act 1987* (Vic) and in accordance with Item 4 of Schedule 1 to the Agreement;

- c. actions that are assessed under the *Environment Effects Act 1978* (Vic), where a decision has been made by the Victorian Minister under section 8B(3)(b) of the *Environment Effects Act 1978* (Vic) that an Environment Effects Statement is not required on the condition that an environmental report is prepared, and which includes an assessment of the action undertaken in accordance with the requirements of Item 5 of Schedule 1 to the Agreement;
 - d. actions that are assessed by an advisory committee appointed under section 151 of the *Planning and Environment Act 1987* (Vic) and where the assessment has been undertaken in accordance with the requirements of Item 6 of Schedule 1 to the Agreement;
 - e. actions that are assessed in accordance with the process at Item 7 of Schedule 1 to the agreement where the action is also assessed by a responsible authority (other than the relevant Victorian Minister) under the permit application process in Part 4 of the *Planning and Environment Act 1987* (Vic);
 - f. actions that are assessed under the permit application process in Part 4 of the *Planning and Environment Act 1987* (Vic), where the relevant Victorian Minister is the responsible authority for the purpose of the Act and the assessment has been undertaken in accordance with the requirements of Item 8 of Schedule 1 to the Agreement;
 - g. actions that are assessed as part of an application for works approval under section 19B of the *Environment Protection Act 1970* (Vic) and where the assessment has been undertaken in accordance with the requirements of Item 9 of Schedule 1 to the Agreement;
 - h. actions that are assessed as part of an application for approval under section 36, 51 or 67 of the *Water Act 1989* (Vic) and where the assessment has been undertaken in accordance with the requirements of Item 10 of Schedule 1 to the Agreement; and
 - i. actions that are assessed under the permit application process in Part 4, Division 1 of the *Heritage Act 1995* (Vic) and where the assessment has been undertaken in accordance with the requirements of Item 11 of Schedule 1 to the Agreement.
13. Classes of actions 2.1(a) and (b) of Schedule 1 are taken to correspond to assessment by environmental impact statement under Division 6 of Part 8 of the EPBC Act. Classes of actions 2.1(c), (e), (f), (g), (h) and (i) of Schedule 1 are taken to correspond to assessment by preliminary documentation under Division 4 of Part 8 of the EPBC Act. The class of action under 2.1(d) is taken to correspond to assessment by an inquiry under Division 7 of Part 8 of the EPBC Act.

14. Clause 6.3(a) of the Agreement provides that in determining the assessment approach for a proposed action, Victoria will decide on a form of assessment that will allow the Commonwealth Minister to have sufficient information to make an informed decision on whether to approve the action and, if so, under what conditions.
15. Where Victoria opts for a process equivalent to the processes in Divisions 5 and 6 of Part 8 of the EPBC Act—that is, the classes of actions specified in Items 2.1(a) and (b) of Schedule 1—Items 3.2 and 4.2 of Schedule 1 require the preparation of guidelines for assessment that ensure that assessment documentation 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 Part 9 of the EPBC Act.
16. Clause 6.6 of the Agreement provides that where an action is assessed in the manner specified in Schedule 1, Victoria must provide an assessment report (or part thereof dealing with relevant impacts of the action) to the Commonwealth Minister. Clause 6.3(b) of the Agreement specifies the matters that the assessment report must include. Relevantly, clauses 6.3(b)(i)(C) and 6.3(b)(ii) require the assessment report to include a description of any matters of national environmental significance (NES) that are likely to be affected by the action and a summary of the relevant impacts of the action on those Matters of NES. When Victoria delivers the assessment report to the Commonwealth Minister, it can also provide other information that is relevant to the Commonwealth Minister’s decision to approve the action (clause 6.6(b)).
17. Section 48(1) of the EPBC Act provides for additional provisions that may be included in a bilateral agreement. The Agreement includes some additional provisions that are provided for in section 48(1). These include:
 - a. Item 2.2 of Schedule 1, which relates to transitional arrangements (as provided for in section 48(1)(e) of the EPBC Act);
 - b. clause 6.4 of the Agreement, which relates to additional steps to improve the efficiency of administrative processes (as provided for in section 48(1)(b) of the EPBC Act in connection with the objects at section 44(c) and (d));
 - c. clause 6.5 of the Agreement, which relates to consultation between the Parties during an assessment to ensure that relevant impacts on matters of national environmental significance are adequately addressed (as provided for in section 48(1)(b) of the EPBC Act – in connection with the object at section 44(c)); and
 - d. clause 9.3 of the Agreement, which relates to the exchange of information between parties (as provided for in section 48(1)(c) of the EPBC Act).

Evidence or other material on which my decision was based

18. The evidence or other material on which I based my decision to enter into the Agreement with Victoria consists of the decision brief prepared by my Department in relation to the Agreement. Among other matters, the brief included:
- a. an analysis of the requirements for entering into a bilateral agreement, in accordance with the EPBC Act and with the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) (EPBC Regulations);
 - b. the public comments that were received in response to the invitation to comment on the draft Agreement; and a report on the public comments received, which will be published for the purpose of section 45(4)(c) of the EPBC Act;
 - c. recovery plans and threat abatement plans in operation for all listed threatened species and ecological communities;
 - d. conservation advices for all listed threatened species and ecological communities with an approved conservation advice;
 - e. relevant international conventions and management principles referenced in Subdivision B, of Division 2 of Part 5, of the EPBC Act; and
 - f. the Agreement.

Findings in relation to the statutory requirements for the decision

Agreement may declare classes of actions do not need assessment (section 47 of the EPBC Act)

19. Under section 47(2) of the EPBC Act, I must be satisfied that assessment of an action in the specified manner will include assessment of the impact the action has or will have, or is likely to have, on each matter protected by a provision of Part 3.
20. A thorough analysis was undertaken of the Victorian legislation accredited in the Agreement (set out in paragraph 12 above), against the requirements of the EPBC Act and EPBC Regulations. For each class of actions, the analysis confirmed that the relevant Victorian processes, in conjunction with the specified manner of assessment set out in Items 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Schedule 1 of the Agreement (as applicable), met these requirements.
21. The Agreement will ensure that, where an action is likely to have a significant impact on matters protected by Part 3 of the EPBC Act, there will be proper assessment and consideration of those impacts before a decision is made by me or my delegate as to whether or not to approve the action.

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

Consultation on draft agreement (section 49A of the EPBC Act)

23. Section 49A(b) of the EPBC Act requires that I take into account the comments received in response to the invitation for public comment published under section 49A(a). The public comments received were provided for my consideration, in addition to a report on the comments received.

24. Comments on the Agreement went to various matters including:

- a. general comments regarding the scope and effect of the Agreement;
- b. specific suggestions regarding the text or content of the Agreement;
- c. comments on implementation of the agreement, including transitional support and administrative arrangements prepared under the Agreement; and
- d. other matters associated with environmental assessment and approval processes.

25. A summary of the comments was included in the report which I approved for publication in accordance with section 45(4) of the EPBC Act.

26. Section 49A(c) requires that I consider the role and interests of Indigenous people in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's commitments under the *Convention on Biological Diversity 1993* (the Biodiversity Convention).

27. Article 14 of the Biodiversity Convention requires appropriate public participation in environmental impact assessment procedures. Article 8(j) of the Biodiversity Convention also imposes an obligation, as far as possible and as appropriate, to respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and to promote wider application of such knowledge, innovations and practices.

28. Clause 7.1 of the Agreement expressly recognises the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources and requires Victoria to advise proponents to take all reasonable steps to obtain the views of Indigenous peoples in relation to any action that is likely to have a significant impact on a matter of NES that relates to Indigenous cultural heritage, or that will occur on or directly affect land held under native title. Additionally, clause 7.3 requires that special arrangements be made to ensure groups with particular communication needs, including

Indigenous people affected by a proposed action, have a reasonable opportunity to comment on assessment documentation.

Objects of the EPBC Act (section 50 of the EPBC Act)

29. Section 50(a) of the EPBC Act requires me to be satisfied that a bilateral agreement accords with the objects of the EPBC Act as set out in section 3(1). The Agreement outlines how the Commonwealth and Victoria will maintain their commitment to high environmental standards, while making swift decisions and delivering certain outcomes. This supports achievement of the object at section 3(1)(d) of the EPBC Act, which is to promote a co-operative approach to the protection and management of the environment, while maintaining protection of the environment (object at section 3(1)(a) of the EPBC Act).
30. Object D of the Agreement outlines the commitment of the parties to work cooperatively so that Australia's high environmental standards are maintained, by ensuring that:
 - a. Australia complies fully with all its international environmental obligations;
 - b. matters of NES are protected as required under the EPBC Act;
 - c. there are high quality assessments of the impacts of proposals on matters of NES; and
 - d. authorised actions do not have unacceptable or unsustainable impacts on matters of NES.
31. Paragraphs 31(a) – (d) above reflect the objects in 3(1)(a), (b), (c), (ca) and (e) of the EPBC Act, which are to:
 - a. provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance;
 - b. promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
 - c. promote the conservation of biodiversity;
 - d. provide for the protection and conservation of heritage;
 - e. and to assist in the co-operative implementation of Australia's international environmental responsibilities.
32. I also considered that the following provisions would further contribute to meeting the objects of the EPBC Act:
 - a. clause 4.1 and clause 6.3 of the Agreement provide for assessment of likely impacts on relevant matters of NES by the accredited processes outlined in Schedule 1. This promotes a cooperative approach to the protection and management of matters of NES (object at section 3(1)(d) of the EPBC Act) and is consistent with the protection of matters of NES (object at section 3(1)(a) of the EPBC Act);

- b. the Agreement facilitates a cooperative approach to environmental assessments by ensuring that Victorian environmental assessment processes may be used for the purpose of decisions on whether to approve actions under Part 9 of the Commonwealth EPBC Act, and through undertakings for administrative cooperation between the parties (object at section 3(1)(d) of the EPBC Act); and
 - c. clause 7.1 of the Agreement notes specifically the roles and interests of Indigenous peoples in promoting conservation and ecologically sustainable use of natural resources (objects at sections 3(1)(b), (d), (f) and (g) of the EPBC Act).
33. I was therefore satisfied that the Agreement accords with the objects of the EPBC Act.
34. Section 50(b) of the EPBC Act requires a bilateral agreement to meet the requirements (if any) prescribed by the EPBC Regulations.
35. The EPBC Regulations set out requirements for assessment bilateral agreements in Part 3 (bilateral agreements) and Schedule 1 (classes of actions not needing assessment).
36. Regulation 3.02 of the EPBC Regulations provides that a bilateral agreement must identify each assessment approach used in the manner of assessment specified in the agreement, and state that the assessment approach corresponds to a particular approach in either Division 4, 5, 6 or 7 of Part 8 of the EPBC Act. I found that item 2.1 of Schedule 1 of the Agreement met the requirements of regulation 3.02 as it identifies the assessment approaches in the Agreement and relates each assessment approach to an approach listed in regulation 3.02(b) of the EPBC Regulations.
37. I considered an analysis of Victorian legislation, accredited by the Agreement, against the relevant requirements of the EPBC Regulations. For each class of actions, the analysis confirmed that the relevant Victorian processes, in conjunction with the specified manner of assessment set out in Schedule 1 to the Agreement, met these requirements.
38. I was therefore satisfied that the agreement met the requirements of the EPBC Regulations.

Relevant international agreements and management principles (sections 51-54 of the EPBC Act)

39. Sections 51(1), 51A(1), 52(1), 53(1)(a) and 54(1)(a) of the EPBC Act stipulate that I may only enter into a bilateral agreement containing a provision relating to a declared World Heritage property, a declared Ramsar wetland, a listed threatened species or threatened ecological community or a listed migratory species, if I am satisfied that the provision is not inconsistent with Australia's obligations under the following conventions (as applicable to the relevant matter of NES):
- a. the Convention for the Protection of the World Cultural and Natural Heritage (the World Heritage Convention);
 - b. the Convention on Wetlands of International Importance (the Ramsar Convention);

- c. the Biodiversity Convention;
 - d. the Convention on Conservation of Nature in the South Pacific (the Apia Convention);
 - e. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
 - f. the Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention);
 - g. the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA);
 - h. the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their Environment (JAMBA); and
 - i. the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds (ROKAMBA), being an international agreement approved under subsection 209(4) of the EPBC Act.
40. In addition, sections 51, 51A and 52 of the EPBC Act provide that I may only enter into a bilateral agreement containing a provision relating to a declared World Heritage property, National Heritage place or declared Ramsar wetland if I am satisfied that the agreement will promote the management of the place in accordance with the relevant management principles (the World Heritage management principles, the National Heritage management principles or the Australian Ramsar management principles, respectively).
41. I have considered all international agreements and related management principles relevant to matters protected under the EPBC Act in Victoria and note that:
- a. the Agreement requires the assessment of impacts of actions on: the world heritage values of a declared World Heritage property; the national heritage values of a National Heritage place; the ecological character of a declared Ramsar wetland; listed threatened species or their habitat and listed threatened ecological communities; listed migratory species or their habitat; a water resource, in relation to coal seam gas or large coal mining developments; and the environment in relation to actions occurring outside Commonwealth areas that impact on Commonwealth land or the Commonwealth marine area, and nuclear actions (clause 6.3(b)); and
 - b. the Agreement will ensure that, where an action is likely to have a significant impact on one of these protected matters, there will be proper assessment and consideration of those impacts before a decision is made by the Minister whether or not to approve the action in accordance with the requirements of Part 9 of the EPBC Act. The thoroughness of the assessment under the relevant Victorian processes has been considered in accordance with the EPBC Regulations, as discussed above.

42. Taking into account the above matters, I was therefore satisfied that the provisions of the Agreement related to declared World Heritage properties, declared Ramsar wetlands, listed migratory species and listed threatened species and ecological communities are not inconsistent with Australia's obligations under the relevant international agreements, and that the agreement promotes the management of World Heritage properties, National Heritage places and declared Ramsar wetlands in accordance with the applicable management principles.

Additional requirements for agreements relating to migratory species, threatened species and threatened ecological communities (sections 53-54 of the EPBC Act)

43. Sections 53(1)(b) and 54(1)(b) of the EPBC Act require me to be satisfied that the Agreement will promote the survival and/or enhance the conservation status of each listed threatened species, migratory species or ecological community to which the provisions of the Agreement relate.

44. Section 53(1)(c) of the EPBC Act requires me to be satisfied that a provision relating to a listed threatened species or threatened ecological community is not inconsistent with any recovery plan or threat abatement plan.

45. Section 53(1)(ca) requires that I have regard to the approved conservation advices for those listed threatened species and ecological communities to which a provision of the Agreement relates.

46. I have considered the recovery plans and threat abatement plans for all listed threatened species and threatened ecological communities. Recovery plans provide for research and management actions necessary to stop the decline of, and support the recovery of, a listed threatened or ecological community. Threat abatement plans provide for research, management and other actions necessary to reduce a key threatening process to an acceptable level.

47. I have had regard to the approved conservation advices in place for all listed threatened species and ecological communities. These approved conservation advices contain:

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

48. I also considered analysis, provided by the Department of the Environment, of the Victorian legislation accredited by the Agreement against the requirements of the EPBC Regulations, as well as the provisions of the Agreement, noting in particular, that:

- a. the Agreement requires the assessment of impacts of actions on listed threatened species or their habitat and any listed threatened ecological communities (clause 6.3(b)(ii)(D));

- b. the Agreement requires the assessment of impacts of actions on listed migratory species or their habitat (clause 6.3(b)(ii)(E));
- c. the Agreement requires Victoria to have regard to recovery plans for relevant listed threatened species or ecological communities and any relevant threat abatement plans or conservation advices when preparing assessment reports on relevant impacts (clause 6.8(a)); and
- d. the Agreement will ensure that, where an action is likely to have a significant impact on listed threatened species or their habitat and any listed threatened ecological communities, there will be proper assessment and consideration of those impacts before a decision is made by the Minister whether or not to approve the action in accordance with the requirements of Part 9 of the EPBC Act. I have also considered the thoroughness of the processes for assessment under the relevant Victorian legislation in accordance with the EPBC Regulations, as discussed above.

49. Taking into account the above, I was therefore satisfied that:

- a. the Agreement will promote the survival and/or enhance the conservation status of each listed threatened species, migratory species or ecological community to which a provision of the Agreement relates;
- b. the relevant provisions of the Agreement are not inconsistent with any recovery plan for a listed threatened species or threatened ecological community to which those provisions relate, or threat abatement plan; and
- c. the assessment processes under Schedule 1 of the Agreement are consistent with the measures contained in approved conservation advices.

Discretionary considerations

50. I found that the Agreement would contribute to the implementation of the Australian Government's 'One-Stop Shop' policy by reducing duplication in environmental assessments, while maintaining high environmental standards.

51. In light of my findings set out above, I found that the Agreement would remove duplication of environmental assessment processes, provide more efficient and effective environmental assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation.

Reasons for my decision

52. Based on my findings set out in this statement of reasons, I was satisfied that:

- a. the statutory requirements for entering into the Agreement were satisfied;
- b. the Agreement would remove duplication of environmental assessment processes, provide more efficient and effective environmental assessment processes, strengthen intergovernmental cooperation, and promote a partnership approach to environmental protection and biodiversity conservation; and
- c. the Agreement would assist in giving effect to the Australian Government's 'One-Stop Shop' policy.

I therefore decided to enter into the Agreement on behalf of the Commonwealth.

The Hon Greg Hunt MP

Minister for the Environment

15 day of October 2014