

# **Report on Public Comments on the Draft ACT Assessment Bilateral Agreement**

As required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, a draft assessment bilateral agreement between the Commonwealth and the Australian Capital Territory (ACT) was published on 28 March 2014 with an invitation for any person to comment by 28 April 2014.

This report provides a summary of submissions received on the draft ACT assessment bilateral agreement. The submissions will be published on the Department of the Environment's website, except where the author has marked the submission, or parts of the submission, as confidential.

Five submissions were received on the draft assessment bilateral agreement:

1. Richard Sharp
2. Friends of Grasslands
3. Property Council of Australia
4. Indigenous Advisory Committee (amended version provided 2 May 2014, after the close of the comment period)
5. Environmental Defender's Office, Australian Capital Territory (received 30 April 2014, after the close of the comment period)

## **1. Effect of the draft bilateral agreement**

### **Issues Raised**

Three submissions were supportive of the use of the draft assessment bilateral agreement to reduce duplication within ACT and Commonwealth assessment processes. All submissions offered suggestions for improvements to the agreement. One submission expressed concern at the adequacy of the comment period on the agreement and suggested how the comment process could be strengthened.

Some submissions made specific comment on the scope and application of the draft assessment bilateral agreement. Some submissions called for the agreement to address additional matters, such as Indigenous heritage and protection of the broader environment. Two submissions suggested that the objects of the agreement should exhibit clearer alignment with the requirements and objects of the EPBC Act.

Two submissions noted the function of the ACT government as both a proponent and an environmental regulator. One submission questioned the application of best practice environmental protection standards by the ACT government. A submission sought clarification surrounding the application of the agreement in regard to the jurisdiction of the National Capital Authority.

### **Response**

The draft bilateral agreement relates to the process for environmental assessment of matters under the EPBC Act. The agreement reflects the relevant statutory requirements of the EPBC Act, including accordance with the objects of the EPBC Act. The agreement provides for close cooperation between the parties to ensure environmental standards are maintained. The agreement also contains obligations to

ensure all relevant impacts of proposed actions to which the agreement applies are adequately assessed.

Under an assessment bilateral agreement, the Commonwealth Environment Minister retains an obligation to make a decision on the approval of an action assessed under the agreement, and under what conditions. Should the Minister not be satisfied that the bilateral agreement is being complied with, or that assessment processes under the agreement do not give effect to the agreement in a way which accords with the objects of the EPBC Act and Australia's international obligations, sections 57 to 64 of the Act provide a mechanism by which the agreement can be cancelled or suspended.

The draft bilateral agreement does not apply to actions within Commonwealth areas, however the agreement may apply to actions that are proposed within ACT land that may affect Commonwealth areas. The EPBC Act definitions of 'Commonwealth areas' and 'Commonwealth land' apply to the agreement. The management and planning control in certain areas of the ACT are under the control of the National Capital Authority. The agreement only applies to the assessment of actions subject to the EIS assessment process under the *Planning and Development Act 2007*(ACT).

## **2. Content of the bilateral agreement**

### **Issues Raised**

Some submissions made general or specific comments on the content of the draft assessment bilateral agreement, while others sought to clarify terms used within the agreement. Two submissions asserted that the agreement could be improved to further reduce duplication in assessment processes. One submission noted the agreement should provide greater certainty for proponents in regard to timeframes for assessment.

Some submissions proposed amendments or additions to the content of the draft bilateral agreement, including the following:

- More frequent review of the operation of the agreement
- Regular reassessment of compliance with EPBC Act requirements.
- Requirements for the audit of the ACT public service in relation to the operation of the agreement.
- Recommendations regarding the role and function of the senior officers' committee.
- Questions were raised regarding the process for developing, and the function of, administrative arrangements, and one submission suggested additional matters that could be addressed within these arrangements.
- Assessment reports should allow for the assessment of impacts on connecting habitat.
- The bilateral agreement should provide for better recognition of the rights of, and engagement with, Indigenous peoples.

### **Response**

The draft bilateral agreement includes appropriate content to reflect the requirements for an agreement under section 47 of the EPBC Act, and is consistent with the

Memorandum of Understanding agreed with ACT on establishing a ‘one stop shop’ for environmental approvals. The EPBC Act and EPBC Regulations contain further requirements relating to assessment bilateral agreements, including requirements to review the operation of a bilateral agreement. The agreement accords with these requirements.

Administrative arrangements will be developed by the Commonwealth and the Australian Capital Territory to support operation of the proposed ACT assessment bilateral agreement. The arrangements will describe how the parties will work together, including processes for communication in relation to assessments under the agreement, mechanisms for review and oversight of the operation of the agreement and information sharing.

The draft bilateral agreement states that the assessment report must describe the impacts on matters of national environmental significance. Further, the assessment of impacts on listed threatened species and migratory species includes impacts on the habitat of these species.

The draft bilateral agreement includes provisions for the engagement of Indigenous peoples. In particular, clause 7.1 provides that assessments will recognise the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources, and promotes the cooperative use of Indigenous peoples’ knowledge of biodiversity and Indigenous heritage. Clause 7.3 of the agreement provides that special arrangements will be made to make information available to groups with particular communication needs, and references the importance of ensuring Indigenous people have access to information.

In response to a submission from the Indigenous Advisory Committee, clause 6.6(b) of the draft bilateral agreement has been amended to allow that the final assessment report may provide additional information on cultural matters (in addition to social and economic specified in the draft agreement). This recognises that cultural matters may also be a relevant consideration for the Commonwealth Environment Minister in making a decision under Part 9 of the EPBC Act.

### **3. Assessment process as outlined in Schedule 1**

#### **Issues Raised**

Some submissions expressed concern at perceived shortcomings with the assessment processes specified in Schedule 1 of the draft bilateral agreement. These comments related to:

- the provision of information by the Australian Capital Territory to inform a Commonwealth approval decision;
- the impact of proposed reforms to the *Planning and Development Act 2007* (ACT) and its impact on the maintenance of assessment standards;
- the adequacy of opportunities for public comment and appeals processes;
- the role and strength of the linkages between the ACT biodiversity laws; and
- public access to information in relation to the assessment process and operation of the bilateral agreement.

## **Response**

The draft bilateral agreement provides robust obligations for the ACT to undertake an assessment of all relevant impacts of proposed actions to which the agreement applies. Under the EPBC Act (section 132), the Commonwealth Environment Minister may also request further information if the Minister believes that he or she does not have enough information to make an informed decision on whether or not to approve the action.

Public access and participation described under the draft bilateral agreement meets the standards and requirements of the EPBC Act.

## **4. Comments in relation to the broader one stop shop policy and other suggestions**

A number of suggestions within the submissions did not relate to the scope of the bilateral agreement, including comments relating to ongoing roles and responsibilities associated with strategic assessments under the EPBC Act, decisions made under the *Australian Capital Territory (Planning and Land Management) Act 1998* (Commonwealth), and activities associated with approval of actions (e.g. enforcing conditions and dispute processes). Two submissions included comments directed at the Australian Government's one stop shop policy which were not directly related to the draft assessment bilateral agreement.