



COMMONWEALTH OF AUSTRALIA



Tasmanian
Government

THE STATE OF TASMANIA

BILATERAL AGREEMENT

Bilateral agreement made under
section 45 of the *Environment
Protection and Biodiversity
Conservation Act 1999 (Cth)*
relating to environmental
assessment

Commonwealth of Australia
(Commonwealth)

and

The State of Tasmania
(Tasmania)

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Details

Parties

The parties to this Agreement are:

The Minister for the Environment for and on behalf of the Commonwealth of Australia (the **Commonwealth**); and

The Minister for the Environment, Parks and Heritage for and on behalf of the State of Tasmania (**Tasmania**).

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 committed to working together across shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and Tasmania 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 Tasmania are jointly committed to maintaining high environmental standards and working together to streamline environmental assessment by this Agreement, as a step to establishing a 'one stop shop' for environmental approvals. This is about setting high standards, making swift decisions and delivering certain outcomes.
- D. The parties will 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.
- E. This Agreement provides for the accreditation of the Tasmanian processes set out in Schedule 1 to ensure an integrated and coordinated approach to the assessment of actions requiring approval from both the Commonwealth Minister (under the EPBC Act) and Tasmania.
- F. This Agreement will therefore enable the Commonwealth to rely on the Tasmanian assessment processes set out in Schedule 1 for approvals under the EPBC Act. As a step toward establishing a 'one stop shop' the parties will work together, where appropriate, so that any conditions attached to a Commonwealth approval are limited to issues not addressed through the Tasmanian assessment and approval.

- G. The parties will endeavour, that by September 2014 a comprehensive approvals bilateral agreement will be in place that will provide accreditation for the broadest range of approvals possible under the EPBC Act, subject to statutory requirements.
- H. 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 and decisions on whether to approve actions.

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 Tasmania, as amended from time to time, and includes its Schedule(s).
Assessment Report	in respect of: <ul style="list-style-type: none">(a) a class of action described in Item 2.1(a)(i) of Schedule 1, the report required by section 26(1) of the <i>State Policies and Projects Act 1993</i> (Tas);(b) a class of action described in Item 2.1(a)(ii) of Schedule 1, the report required by Item 4.7 of Schedule 1 to this Agreement; and(c) a class of action described in Item 2.1(a)(iii) of Schedule 1, the statement of reasons required by section 60T(6) of the <i>Land Use Planning and Approvals Act 1993</i> (Tas).
Board	the Board of the Environment Protection Authority established under section 13 of the <i>Environmental Management and Pollution Control Act 1994</i> (Tas).
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.
Commission	the Tasmanian Planning Commission established under section 4 of the <i>Tasmanian Planning Commission Act 1997</i> (Tas).
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 the Environment, or any other Commonwealth agency that administers this Agreement from time to time.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
EPBC Regulations	the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (Cth).

Information	includes data.
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.
Previous Bilateral Agreement	the bilateral agreement, dated 23 May 2011, between the Commonwealth and Tasmania relating to environmental impact assessment.
Tasmanian Minister	the Tasmanian Minister administering the legislation specified in Schedule 1 and, except in relation to clauses 12, 13 and 14, includes a delegate of the Minister.
Schedule	a schedule to this Agreement.

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa, and a gender includes 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 'for example' or similar expressions;
- (d) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement;
- (e) a reference to a statute, ordinance, code or other Law includes regulations, guidelines and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference in this Agreement to Tasmanian Law, is a reference to the relevant Law as in force at the Commencement Date; and
- (g) notes and headings are for convenient explanation or reference only and do not form part of this Agreement or affect the meaning of the provision to which they relate.

1.3 Priority of Agreement documents

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

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

2. Nature of this Agreement

- (a) This Agreement is a bilateral agreement made under section 45 of the EPBC Act.
- (b) This Agreement does not create contractual or other legal obligations between the parties, and a breach of this Agreement will not give rise to any cause of action, or right to take legal proceedings, other than as provided for in the EPBC Act.
- (c) Transitional support from the Commonwealth in the form of embedded officers will be considered and detailed in the Administrative Arrangements.

3. Duration of this Agreement

This Agreement commences on the Commencement Date and continues unless cancelled or suspended in accordance with the EPBC Act.

Note: Section 65(2) of the EPBC Act requires the Commonwealth Minister to cause a review of the operation of this Agreement to be carried out at least once every five years while this Agreement remains in effect.

4. Effect of this Agreement

4.1 Classes of actions not requiring assessment under the EPBC Act

Under subsection 47(1) of the EPBC Act, it is declared that an action does not require assessment under Part 8 of the EPBC Act if the action is in the class of actions specified in Schedule 1 to this Agreement.

4.2 Scope

- (a) Subject to clause 4.3, clause 4.1 applies to actions which occur wholly within Tasmania, including its coastal waters.
- (b) For actions which do not occur wholly within Tasmania, or which are taken in Tasmania 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 an action in a Commonwealth area or an action taken by the Commonwealth or a Commonwealth agency.

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

- (a) The Commonwealth Minister may determine that a particular action is not within a class of actions to which clause 4.1 applies.
- (b) The Commonwealth Minister cannot make a decision under clause 4.3(a) after the Tasmanian Minister has given notice under clause 5.3.

4.4 Previous Bilateral Agreement

The Previous Bilateral Agreement is revoked from the Commencement Date.

5. Procedures for referral

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

Tasmania 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 an accredited assessment process may be available.

5.2 Commonwealth Minister to inform Tasmanian Minister about whether an action is a controlled action

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

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

5.3 Notification by Tasmanian Minister that an accredited process will apply

Where:

- (a) the Commonwealth Minister has notified the Tasmanian Minister that an action proposed to take place in Tasmania is a controlled action; and
- (b) the action does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 to this Agreement,

the Tasmanian Minister must, within 10 business days after receiving the written notice referred to in clause 5.2, advise the Commonwealth Minister, in writing, whether the action will be assessed in a manner specified in Schedule 1 to this Agreement.

6. Assessment

6.1 Statutory undertaking

- (a) Where an action:
 - (i) is a controlled action taken or proposed to be taken in Tasmania;
 - (ii) does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 of this Agreement; and
 - (iii) is an action:
 - (A) taken or proposed to be taken by a constitutional corporation; or
 - (B) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and a Territory, or between two Territories; or
 - (C) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries,

Tasmania undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.

- (b) The parties agree that 'greatest extent practicable' in clause 6.1(a) is satisfied where the assessment has been undertaken in a specified manner of assessment as outlined in Schedule 1.

6.2 Proponent service delivery charter

The parties agree to determine, at the commencement of the assessment process for an action, the key deliverables, assessment processes, milestones, and contact personnel for each party. To this end, the parties, in consultation with the proponent, agree to establish a proponent service delivery charter for appropriate actions in the manner set out in the Administrative Arrangements.

6.3 Single assessment

- (a) In determining the assessment approach for a proposed action, Tasmania will decide on a form of assessment that will allow the Commonwealth Minister to have sufficient information to make an informed decision whether or not to approve the proposed action and, if so, under what conditions.
- (b) To ensure that a single Tasmanian assessment can be relied on by the Commonwealth Minister for a decision under Part 9 of the EPBC Act, Tasmania will ensure that the Assessment Report includes:
 - (i) a description of:
 - (A) the action;
 - (B) the places affected by the action; and
 - (C) any Matters of NES that are likely to be affected by the action;
 - (ii) all relevant impacts on Matters of NES separately. This means that the nature and extent of likely impacts must be explicitly assessed for each Matter of NES, being, as relevant:
 - (A) the world heritage values of a 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) listed migratory species or their habitat;
 - (F) a water resource, in relation to coal seam gas or large coal mining developments;
 - (G) the environment of the Commonwealth marine area (for actions outside the Commonwealth marine area that may impact the environment in the Commonwealth marine area);
 - (H) Commonwealth land (for actions outside Commonwealth land that may impact on the environment on Commonwealth land); and
 - (I) the environment (in the case of a nuclear action);
 - (iii) a separate chapter or part dealing with all relevant impacts on Matters of NES;

- (iv) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on each relevant Matter of NES proposed by the proponent or suggested in public submissions;
 - (v) to the extent practicable, a description of any feasible alternatives to the action that have been identified through the assessment process, and their likely impact on each Matter of NES;
 - (vi) a statement of conditions for approval of the action that may be imposed to address identified impacts on Matters of NES, including consideration of any offsets;
 - (vii) a statement of Tasmanian approval requirements and conditions that apply to the action when the report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action; and
 - (viii) the information and opinion on which the assessment is based, or its source.
- (c) In relation to coal seam gas and large coal mining developments, to enable the Commonwealth Minister to efficiently proceed to a decision consistent with section 131AB of the EPBC Act, Tasmania will, subject to statutory timeframes for an assessment:
- (i) refer coal seam gas or large coal mining developments that are likely to have a significant impact on water resources to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development for advice; and
 - (ii) take account of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development advice in the Assessment Report.
- (d) Tasmania may seek advice on relevant matters from Commonwealth agencies with relevant expertise with details to be outlined in the Administrative Arrangements.

6.4 Consistency and predictability

The parties agree to take steps to improve the efficiency and effectiveness of their own 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.

6.5 Draft Assessment Report

- (a) Tasmania will provide to the Commonwealth Minister for comment a draft Assessment Report (or relevant part which addresses impacts on Matters of NES) before finalising it for the purposes of the relevant assessment process and both parties will endeavour, to the greatest extent possible, for officials to agree on a proposed set of common conditions.

- (b) After receiving a copy of the draft Assessment Report, the Commonwealth Minister will provide advice within an agreed timeframe as to whether it provides the required Information for the Commonwealth Minister to make a decision on whether or not to approve the action under Part 9 of the EPBC Act.
- (c) If the Commonwealth Minister does not respond within the agreed timeframes it is taken that the Commonwealth has no additional requirements.
- (d) If the Commonwealth Minister decides that further Information is required, Tasmania will either:
 - (i) provide the Information; or
 - (ii) proceed to finalise the Assessment Report notwithstanding the advice.

6.6 Final Assessment Report

- (a) When an action is assessed in the manner specified in Schedule 1 of this Agreement, Tasmania will:
 - (i) provide a copy of the final Assessment Report, or part thereof which addresses the relevant impacts of the action, to the Commonwealth Minister on the date on which the Assessment Report is provided to the proponent; and
 - (ii) provide copies of the Information about the relevant impacts of the action to the Commonwealth Minister not more than 10 business days after the date on which the Assessment Report is provided to the proponent.
- (b) Tasmania may, when it provides the final Assessment Report, provide additional Information on social and economic matters (only where the provision of this Information does not breach privacy or commercial in confidence requirements, or any relevant Law).

6.7 Additional Information

- (a) If, in deciding whether to approve the taking of a proposed action assessed under this Agreement, the Commonwealth Minister uses 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 Tasmanian Minister.
- (b) The Commonwealth Minister agrees to give Tasmania an opportunity to comment on the accuracy of this Information, 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 action.

6.8 Relevant plans and policies

When preparing Assessment Reports on relevant impacts under this Agreement, Tasmania agrees to have regard to relevant guidelines, policies and plans, including where relevant:

- (a) the Commonwealth EPBC Act Environmental Offsets Policy, including any analysis undertaken by the proponent against the requirements of that policy;
- (b) a recovery plan for a relevant listed threatened species or listed threatened 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 in a report on the 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) Assessments will recognise the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources and the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.
- (b) In particular, Tasmania will:
 - (i) advise proponents to take all reasonable steps to obtain the views of Indigenous peoples in relation to any action under assessment that is likely to have a significant impact on any Matter of NES that relates to Indigenous cultural heritage, or that will occur on or directly affect land held under native title;
 - (ii) advise proponents to consider the views of Indigenous peoples as an important source of information on the value of Indigenous cultural heritage; and
 - (iii) consider and apply, as appropriate, guidelines published by the Commonwealth in relation to consulting with Indigenous peoples for proposed actions that are under assessment where a comparable Tasmanian process for consulting with Indigenous peoples does not exist.

7.2 Public access – generally

Tasmania agrees that documentation about each assessment made under the manner specified in Schedule 1 will be available to the public, subject to any appropriate statutory exemptions that would be available if the assessment was undertaken under Part 8 of the EPBC Act by the Commonwealth Minister (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) Tasmania will ensure that special arrangements are made, as appropriate, to ensure directly affected groups with particular communication needs have an adequate opportunity to comment on actions assessed in the manner specified in Schedule 1.
- (b) The parties note that Indigenous people affected by a proposed action may have particular communication needs, and will ensure arrangements are made to afford affected Indigenous people a reasonable opportunity to comment on actions assessed under this Agreement.

8. Conditions

8.1 Conditions attached to an approval

- (a) The parties recognise the desirability of avoiding, to the extent practicable, attaching inconsistent conditions to approvals for an action assessed under this Agreement and Tasmanian 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 State conditions when deciding whether to attach a condition to an approval;
 - (ii) agree to consult on the conditions proposed to be attached to an approval granted by either party; and
 - (iii) agree to inform one another before varying conditions attached to an approval for an action, where the condition relates to, or affects, a matter protected by Part 3 of EPBC Act. The parties also agree to advise one another of any such variation after it has been made.
- (c) To minimise duplication, to the extent possible, for actions assessed under this Agreement:
 - (i) Tasmania will identify conditions imposed, recommended, or likely to be imposed, by Tasmania in relation to Matters of NES; and
 - (ii) Where appropriate, the Commonwealth will use its best endeavours to ensure that conditions attached to an approval under the EPBC Act are limited to Matters of NES not addressed, or likely to be addressed, by conditions of approval attached by Tasmania.

8.2 Monitoring compliance with conditions

- (a) Where an action:
 - (i) is taken in Tasmania;
 - (ii) requires the approval of the Commonwealth Minister under Part 9 of the EPBC Act; and
 - (iii) requires approval (however described) under Tasmanian Law,the parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication.
- (b) Without limiting clause 8.2(a), the parties agree:
 - (i) that each party will inform the other of any conditions attached to an approval(s) to take an action assessed under this Agreement; and
 - (ii) subject to the legal requirements of each party, to put complementary arrangements in place for monitoring compliance with conditions on any action. The aim of these arrangements is to ensure that reporting and compliance activities, including site inspections are, to the extent practicable, consistent and effective.

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 (Exchange of Information);
- (d) which will assist proponents in meeting their statutory obligations under Tasmanian Law and the EPBC Act, through satisfying the requirements of the assessment processes identified in Schedule 1; 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 maintenance of this Agreement and the partnership, including making recommendations to governments on a continuous improvement basis, and to consider the implications of any legislative or other system changes proposed by either party.

9.3 Exchange of Information

- (a) Subject to relevant Tasmanian and Commonwealth Law, 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 relevant Tasmanian and Commonwealth Law, the permission of the intellectual property 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) Subject to relevant Tasmanian and Commonwealth Law, the parties agree that Information 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 and streamline assessment processes as set out in Schedule 2 and the Administrative Arrangements.

9.5 Guidance documents

- (a) The parties commit to cooperate in the development, maintenance, review, and implementation of guidance documents relating to Matters of NES and the operation of this Agreement.
- (b) For the purposes of this clause 9.5, guidance documents may include:
 - (i) referral / application guidelines in relation to significant impacts on Matters of NES;
 - (ii) guidance documents for listed threatened species and ecological communities; and
 - (iii) other guidelines, policies or plans relating to Matters of NES prepared by the Commonwealth under the EPBC Act that may relate to the operation of this Agreement.

10. Review

10.1 Five year reviews

- (a) A review of the operation and effectiveness of this Agreement must be carried out at least once every five years while this Agreement remains in effect in accordance with section 65 of the EPBC Act.
- (b) Each review of this Agreement under this clause will be carried out jointly by the relevant administrative units of the Commonwealth and Tasmania, at their own cost.
- (c) Each review will include an evaluation of the operation and effectiveness of this Agreement against the objects of this Agreement.
- (d) The Administrative Arrangements will set out the process that the parties agree to follow in conducting each review.
- (e) The Commonwealth Minister must publish the report of each review in accordance with the EPBC Regulations, and give a copy of the report of each review to Tasmania.

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.

11.2 Tasmanian Auditor-General

The parties recognise that, under the *Audit Act 2008* (Tas), the Tasmanian Auditor-General may audit the operations of the Tasmanian public sector 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 about the manner of operation 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; and
 - (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 Tasmanian official; and
 - (C) between the Commonwealth Minister and the Tasmanian Minister.
- (b) This clause 12 is subject to the rights and obligations of each party under the 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 the Tasmanian Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister to cancel or suspend all or part of this Agreement if the Tasmanian Minister requests a notice of cancellation or suspension in accordance with this Agreement.
- (b) A request by the Tasmanian 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:
 - (i) the request is made on the grounds that the Tasmanian Minister is not satisfied that the Commonwealth has complied or will comply with this Agreement; or
 - (ii) the request is made on the grounds that the Tasmanian Minister is not satisfied that the objects of this Agreement are being achieved; and

- (iii) before making the request, the Tasmanian 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, the Commonwealth Minister must consult with the appropriate Tasmanian Minister on the wording of the amendment.

14.3 Amendment of legislation

If the EPBC Act, *State Policies and Projects Act 1993 (Tas)*, *Land Use Planning and Approvals Act 1993 (Tas)*, *Environmental Management and Pollution Control Act 1994 (Tas)* or any other relevant Law is amended, or proposed to be amended, in a manner that would affect the operation of this Agreement, the parties agree to promptly notify each other and the parties will seek to agree as soon as practicable on whether it is necessary to make another bilateral agreement varying or replacing this Agreement.

15. Freedom of information

- (a) If a party receives any request, including under freedom of information Laws, for any documents originating from another party which are not otherwise publicly available, the parties will, subject to the requirements of the relevant freedom of information Laws, consult on the release of those documents.
- (b) The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met.

16. General provisions

16.1 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

16.2 Notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication.

16.3 Disclosure of Information

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

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 does not require assessment under Part 8 of the EPBC Act if the action is in a class of actions specified in this Schedule.

2. Classes of actions to which clause 4.1 applies

2.1 Classes of Actions

- (a) Subject to Item 2.1(b) of this Schedule 1, for the purposes of the declaration in clause 4.1 of this Agreement, the classes of action are:
 - (i) actions that are assessed under Part 3 of the *State Policies and Projects Act 1993* (Tas) and in accordance with Item 3 of this Schedule;
 - (ii) actions that are assessed under section 24, section 25 or section 27 of the *Environmental Management and Pollution Control Act 1994* (Tas) (whether as a result of a permit application under the *Land Use Planning and Approvals Act 1993* (Tas), or as a result of a separate referral of the action to the Board) and in accordance with Item 4 of this Schedule; and
 - (iii) actions that are assessed by project impact statement under Division 2A of Part 4 of the *Land Use Planning and Approvals Act 1993* (Tas) and in accordance with Item 5 of this Schedule.

Each of these assessment approaches are taken to correspond to assessment by environmental impact statement under the EPBC Act.

- (b) A class of actions described in Item 2.1(a) of this Schedule 1 does not include actions which have been prescribed under section 25(1) of the EPBC Act.

2.2 Transitional

- (a) A class of actions described in Item 2.1(a) of this Schedule 1 includes action where:
 - (i) the Tasmanian Minister has indicated in a written notice to the Commonwealth Minister under Clause 13 of the Previous Bilateral Agreement that the action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement; and
 - (ii) the relevant assessment process for that action had not been completed before the revocation of the Previous Bilateral Agreement.

3. Assessment under the *State Policies and Projects Act 1994 (Tas)*

3.1 Overview

Any controlled action subject to this Agreement and assessed using the assessment approach described in Item 2.1(a)(i) of this Schedule 1 must also be subject to the additional requirements in this Item 3 of this Schedule 1.

3.2 Assessment approach

The Minister administering the *State Policies and Projects Act 1993 (Tas)* must give a written direction under section 20(1) to the Commission to undertake an integrated assessment of the proposed action as a project of State significance. The direction must provide that the process to be followed in undertaking the integrated assessment includes an environmental impact assessment component.

3.3 Guidelines for assessment

- (a) The Commission must prepare written guidelines for the preparation of an environmental impact statement that are designed to ensure that the environmental impact statement:
 - (i) assesses all relevant impacts of the proposed action;
 - (ii) contains enough information about the proposed action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the action; and
 - (iii) addresses the matters (if any) prescribed for the purposes of section 102(2)(b) of the EPBC Act relating to the preparation of guidelines for a draft environmental impact statement under that Act.
- (b) The Commission will, if it considers it appropriate to do so, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister, publish draft guidelines for the preparation of the environmental impact statement and seek public comment on the draft guidelines.

3.4 Invitation for public comment

- (a) An environmental impact statement must be prepared in accordance with the guidelines mentioned in Item 3.3 of this Schedule 1, and must be released for public comment for a period of at least 28 days.
- (b) Prior to or at the commencement of the public comment period, notice must be given by public advertisement of the availability of copies of the environmental impact statement and the opportunity for the public to provide comments.

3.5 Advertising and consultation

- (a) When the public is invited to comment on the draft environmental impact statement or guidelines mentioned in Items 3.3 or 3.4 of this Schedule 1, the invitation must be published in a daily newspaper that circulates throughout Australia and a daily newspaper that circulates in Tasmania.
- (b) The advertisements must include:
 - (i) the name of the action;
 - (ii) a brief description of the action and its location(s);

- (iii) each matter protected by a provision of Part 3 of the EPBC Act;
- (iv) the name of the person proposing to take the action;
- (v) the name of the designated proponent (if not the person intending to take the action);
- (vi) Information on how the relevant documents may be obtained; and
- (vii) the deadline for public submissions.

3.6 Responding to public comments

The proponent must:

- (a) be provided with representations made by the public to the Commission during the period that the draft environmental impact statement is released for public comments; and
- (b) prepare:
 - (i) a revised environmental impact statement; or
 - (ii) a supplement to the environmental impact statement, that summarises or takes into account the public submissions (if any) relating to the relevant impacts of the proposed action which are received during the public comment period; and
- (c) submit the revised environmental impact statement, or the supplement to the environmental impact statement, to the Commission.

3.7 Assessment Report

The Assessment Report must take into account:

- (a) any comments received in response to the invitation, mentioned in Item 3.4 above, for the public to comment on the environmental impact statement;
- (b) the environmental impact statement;
- (c) information provided by the proponent under Item 3.6 of this Schedule; and
- (d) any other relevant information available to the Commission.

4. Assessment under the *Environmental Management and Pollution Control Act 1994 (Tas)*

4.1 Overview

Any controlled action subject to this Agreement and assessed using the assessment approach described at Item 2.1(a)(ii) of this Schedule 1 must also be subject to the additional requirements in this Item 4 of this Schedule 1.

4.2 Assessment approach

For the purposes of the assessment undertaken by the Board, a development proposal and environmental management plan is prepared in accordance with the guidelines issued by the Board under the *Environmental Management and Pollution Control Act 1994 (Tas)*.

4.3 Guidelines for assessment

- (a) The Board must prepare guidelines for the preparation of the development proposal and environmental management plan. The guidelines must ensure that the development proposal and environmental management plan:
 - (i) assesses all relevant impacts of the proposed action;
 - (ii) contains enough Information about the proposed action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the action; and
 - (iii) addresses the matters (if any) prescribed for the purposes of section 102(2)(b) of the EPBC Act relating to the preparation of guidelines for a draft environmental impact statement under that Act.
- (b) The Board will, if it considers it appropriate to do so, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister, publish draft guidelines for the preparation of the development proposal and environmental management plan and seek public comment on the draft guidelines.

4.4 Invitation for public comment

- (a) A development proposal and environmental management plan must be prepared in accordance with the guidelines mentioned in Item 4.3 of this Schedule 1, and released for public comment for a period of at least 28 days.
- (b) Prior to or at the commencement of the public comment period, notice must be given by public advertisement of the availability of copies of the development proposal and environmental management plan and the opportunity for the public to provide comments.

4.5 Advertising and consultation

- (a) When the public is invited to comment on the development proposal and environmental management plan or guidelines mentioned in Item 4.3 and 4.4 of this Schedule 1, the invitation must be published in a daily newspaper that circulates throughout Australia and a daily newspaper that circulates in Tasmania.
- (b) The advertisements must include:
 - (i) the name of the action;
 - (ii) a brief description of the action and its location(s);
 - (iii) each matter protected by a provision of Part 3 of the EPBC Act;
 - (iv) the name of the person proposing to take the action;
 - (v) the name of the designated proponent (if not the person intending to take the action);
 - (vi) Information on how the relevant documents may be obtained; and
 - (vii) the deadline for public submissions.

4.6 Responding to public comments

The proponent must:

- (a) be provided with the public submissions (if any) received during the public comment period; and

- (b) prepare:
 - (i) a revised development proposal and environmental management plan; or
 - (ii) a supplement to the development proposal and environmental management plan,
 - that summarises or takes into account the public submissions (if any) relating to the relevant impacts of the proposed action which are received during the public comment period; and
- (c) submit the revised development proposal and environmental management plan, or the supplement to the development proposal and environmental management plan, to the Board.

4.7 Assessment Report

An Assessment Report must be prepared by the Board. The Assessment Report must take into account:

- (a) any submissions received in response to the invitation, mentioned in Item 4.4 above, for the public to comment on the development proposal and environmental management plan;
- (b) the development proposal and environmental management plan;
- (c) information provided by the proponent under Item 4.6 of this Schedule; and
- (d) any other relevant information available to the Board.

5. Assessment under the *Land Use Planning and Approvals Act 1993 (Tas)*

5.1 Overview

Any controlled action subject to this Agreement and assessed using the assessment approach described at Item 2.1(a)(iii) of this Schedule 1 must also be subject to the additional requirements in this Item 5 of this Schedule 1.

5.2 Guidelines for assessment

- (a) The assessment guidelines prepared by the Panel for the preparation of a project impact statement must be designed to ensure that the project impact statement:
 - (i) assesses all relevant impacts of the proposed action;
 - (ii) contains enough information about the project and its relevant impacts to enable the Commonwealth Minister to make an informed decision whether or not to approve the proposed action; and
 - (iii) addresses the matters (if any) prescribed for the purposes of paragraph 102(2)(b) of the EPBC Act relating to the preparation of guidelines for a draft environmental impact statement under that Act.
- (b) In the preparation of the guidelines the Panel will publish draft guidelines and seek public comments if the Panel considers it appropriate to do so, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister.

5.3 Invitation for public comment

A project impact statement must be prepared by the proponent in accordance with the guidelines mentioned in Item 5.2 of this Schedule 1, and must be released for public exhibition and comment for a period of at least 28 days.

5.4 Advertising and consultation

- (a) When the public is invited to comment on the draft project impact statement documentation or draft guidelines referred to in Items 5.2 or 5.3, the invitation must be published in a daily newspaper that circulates throughout Australia and a daily newspaper that circulates in Tasmania.
- (b) The advertisements must include:
 - (i) the name of the action;
 - (ii) a brief description of the action and its location(s);
 - (iii) each matter protected by a provision of Part 3 of the EPBC Act;
 - (iv) the name of the person proposing to take the action;
 - (v) the name of the designated proponent (if not the person intending to take action);
 - (vi) Information on how the relevant documents may be obtained; and
 - (vii) the deadlines for public submissions.

5.5 Responding to public comments

The proponent must:

- (a) be provided with representations made by the public to the Panel during the period that the draft project impact statement is released for public comments;
- (b) prepare:
 - (i) a revised project impact statement; or
 - (ii) a supplement to the project impact statement,
that summarises or takes into account the public comments (if any) relating to the relevant impacts of the proposed action which are received during the public comment period; and
- (c) submit the revised project impact statement, or the supplement to the project impact statement, to the Panel.

5.6 Assessment Report

The Assessment Report must take into account:

- (a) any representations received in response to the invitation, mentioned in Item 5.3 above, for the public to submit representations on the project impact statement;
- (b) the project impact statement;
- (c) Information provided by the proponent under Item 5.5 of this Schedule; and
- (d) any other relevant Information available to the Panel.

Schedule 2 - Further administrative streamlining of assessment and approval processes

1. Preamble

- (a) In the Memorandum of Understanding signed on 19 December 2013, the parties to this Agreement committed to continuing to streamline assessment and approval processes while maintaining environmental outcomes consistent with relevant legislation.
- (b) This Schedule outlines the activities that the parties have identified, in addition to those described elsewhere in this Agreement, which will assist in further streamlining assessment and approval processes.

2. Streamlining Assessment and Approval Processes

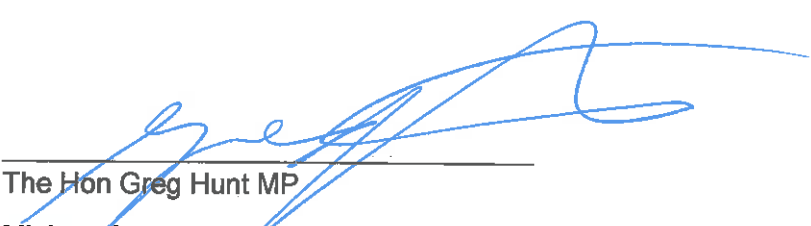
The parties agree to pursue the following streamlining measures:

- (a) providing greater up-front guidance to industry, including through the development of policies and guidelines, such as additional EPBC Act significant impact guidelines on whether a proposed action is likely to have a significant impact on a matter of NES;
- (b) the use of strategic assessments under Part 10 of the EPBC Act, where the adoption of a landscape-scale approach to assessing the likely impacts on matters of NES would be more efficient and effective than separate assessment of individual actions, while delivering comparable or better environmental outcomes;
- (c) additional streamlining measures that may be outlined in the Administrative Arrangements.

Execution page

EXECUTED as an agreement

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



The Hon Greg Hunt MP
Minister for the Environment

Date

9-9-2014

**SIGNED for and on behalf of the State of
Tasmania by:**



The Hon Matthew Groom MP
Minister for the Environment, Parks and
Heritage

Date

22/10/14

