

Report on Public Comments on the Draft Tasmanian Assessment Bilateral Agreement

Overview

In line with the Commonwealth 'One-Stop Shop' policy and as required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), the draft assessment bilateral agreement (the agreement) between the Commonwealth and Tasmania was published on 18 July 2014 with an invitation for any person to comment by 15 August 2014. This report summarises and provides responses to issues raised through this process and is a report for the purpose of section 45(4)(c) of the EPBC Act.

Three submissions were received on the agreement:

1. Minerals Council of Australia
2. Property Council of Australia
3. Environmental Defenders Office (Tas)

Each submission made various general observations about the agreement. These included:

- support for streamlining and improved coordination of Tasmanian and Commonwealth assessment processes;
- opportunities to minimise delays and reduce approval timeframes through the agreement;
- concern at reduced Commonwealth involvement in management and assessment of environmental issues in Tasmania; and
- concern at the resourcing burden imposed on Tasmania by the agreement.

Issues

The Property Council of Australia and the Environmental Defenders Office (Tas) (EDO) made specific comment on the content of the agreement, including suggested amendments. These comments addressed the following issues:

- alignment of the objects of the agreement with the objects of the EPBC Act;
- the scope of the agreement in relation to accredited assessment processes;
- the plans and policies requiring consideration by Tasmania under the agreement;
- the content and adequacy of assessment documentation prepared by Tasmania under the agreement;
- capacity of the Commonwealth to impose approval conditions under the agreement;
- operation and transparency of the administrative arrangements and the Senior Officers' Committee (which are to be established to assist in implementation of the agreement); and
- need for transitional support from the Commonwealth to Tasmania to implement the agreement.

Some comments were directed at matters beyond the provisions of the agreement and related to the 'One-Stop Shop' policy or the operation of the EPBC Act more generally. Other comments suggested minor or technical changes to the agreement to clarify the meaning of different clauses.

Response

The Commonwealth's 'One-Stop Shop' policy will put in place measures to maintain high environmental standards, while reducing regulatory duplication across jurisdictions.

The agreement relates to the process for assessment of impacts on matters of national environmental significance under the EPBC Act. The agreement reflects the statutory requirements of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) in relation to assessment bilateral agreements.

In relation to comments received on the content of the agreement:

- Consistent with section 50(a) of the EPBC Act, the agreement accords with the objects of the EPBC Act. The agreement accredits Tasmanian assessment processes under the *State Policies and Projects Act 1993* (Tas), *Land Use Planning and Approvals Act 1993* (Tas) and *Environmental Management and Pollution Control Act 1994* (Tas). A thorough analysis was undertaken of the agreement and each relevant assessment process against the requirements of the EPBC Act and EPBC Regulations. The analysis confirmed that each process, in conjunction with the specified manner of assessment set out in Schedule 1 to the agreement, met these requirements.
- In undertaking an assessment under the agreement, Tasmania must consider Commonwealth guidelines and policies, such as recovery plans, conservation advices and threat abatement plans (Clause 6.8). Clause 6.8 remains inclusive rather than exclusive, such that plans and policies are to be considered where relevant. In response to a comment from the EDO, clause 6.8 has been amended to include explicit reference to management plans for World Heritage properties, National Heritage places and declared Ramsar wetlands.
- Under the agreement, the Commonwealth Minister can comment on the assessment report prepared by Tasmania, prior to finalisation (clause 6.5). The Commonwealth Minister can also request or use additional information in relation to the proposal under assessment before making an approval decision (section 132 and section 136(2)(e) of the EPBC Act).
- Under the agreement, the Commonwealth Minister will still be required to make a final approval decision on each proposal and to impose approval conditions if deemed necessary. The agreement requires the Commonwealth and Tasmania to avoid duplicative or inconsistent approval conditions, to the extent possible (clause 8.1).
- The administrative arrangements between the parties will include mechanisms for communication, review, oversight and information sharing (clause 9.1). The administrative arrangements will also detail and provide for the establishment and operation of the Senior Officers' Committee (clause 9.2). The administrative arrangements will be made publicly available when finalised. In response to a comment from the EDO, clause 9.1 has been amended to further clarify the purpose of the administrative arrangements.
- The agreement will accredit Tasmanian assessment processes, and replaces an existing assessment bilateral agreement. The agreement does not affect requirements for the Commonwealth Minister to make a final approval decision in relation to matters of national environmental significance. It is not anticipated that the agreement will impose a significant resource burden on Tasmania. As part of the broader 'One-Stop Shop' reform the Commonwealth has also offered to provide transitional support to state and territory agencies in the form of embedded officers on a temporary basis, to ensure implementation occurs as smoothly as possible.