

REPORT ON COMMENTS

As required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a draft assessment bilateral agreement between the Commonwealth of Australia and the Australian Capital Territory was published on 24 May 2008 with an invitation for any person to comment.

Sixteen submissions were received on the draft bilateral agreement:

1. Sylvia Cooper
2. Menkit Prince (x2)
3. Naomi Henry
4. Claire Newman
5. Debbie Falconer
6. G F Downing
7. Jan Heald
8. Susan Gray
9. Dugald Holmes
10. Friends of Grasslands
11. Brett Odgers (x2)
12. Kerry Hewson
13. Environmental Defenders Office ACT Inc.
14. Australian Society for Kangaroos

Submissions 1 – 5, 6, 9, 12 and 14 commented that there were limitations in the accredited ACT assessment process, including that the agreement would provide for only limited information to be considered.

Response: The accredited ACT assessment process provides sufficient opportunity for the collection of information and opinion on actions to be assessed under the bilateral agreement. This is because the bilateral agreement provides for the Minister to receive a report which includes, or is accompanied by, enough information about the relevant impacts of a proposed action to allow the Minister to make an informed decision whether or not to approve the action under Part 9 of the EPBC Act. The bilateral agreement also establishes public consultation requirements that allow a range of scientific and other opinion to be provided in relation to the assessment of the relevant impacts of a proposed action.

Submissions 2, 7 and 13 raised concerns about public notification and consultation processes under the bilateral agreement or at a number of stages of the accredited ACT assessment process. Submission 13 also commented on restrictions on public access to assessment documentation in the draft bilateral agreement that exceed those contained in the EPBC Act.

Response: The bilateral agreement meets the required consultation processes because it establishes the requirements for broad consultation through the preparation and public notification of an EIS. Additional opportunities for notification and public comment would add delay to the accredited ACT assessment process. The bilateral agreement also provides for special consultative arrangements to be undertaken with Indigenous people.

Minor technical amendments have been made to the bilateral agreement to address the issue of potential restrictions on public access to documentation under the accredited ACT assessment process which in some circumstances might possibly exceed those under the EPBC Act.

Submissions 6, 8 - 11 commented about a range of issues regarding the need to enter into the bilateral agreement, the capacity of the ACT to administer and enforce the bilateral agreement, potential workload issues as well as the processes for review and conflict resolution.

Response: Regarding the need to enter the bilateral agreement, the Council of Australian Governments committed to finalise EPBC Act agreements as a means of addressing cross-jurisdictional regulatory reform. The bilateral agreement derives its legal effect from Part 5 of the EPBC Act.

The bilateral agreement requires both parties to fulfill their obligations. It is expected that the ACT will be able to administer assessments effectively under the bilateral agreement without incurring significant additional expenditure. In any case, the bilateral agreement contains a requirement for a yearly review of the additional implementation costs that the ACT incurs in the preceding 12 months (clause 35).

It is also not expected that the bilateral agreement will necessarily result in a higher number of assessments being performed by the ACT. In accrediting the ACT assessment process for the purposes of the EPBC Act, the agreement removes a pre-existing duplication of process that required certain actions to be separately assessed under both the Commonwealth and ACT environmental assessment regimes.

The accredited ACT assessment process under the bilateral agreement will enable the Commonwealth Environment Minister to consider all relevant impacts of a proposed action, including both indirect consequences and impacts occurring across jurisdictional boundaries.

The requirement for a five-yearly review has been adopted in bilateral agreements with other states and territories and has been proven to be an appropriate and administratively efficient timeframe for allowing a proper assessment of how the parties have implemented the agreement. The conflict resolution provisions contained in the agreement also reflect similar approaches in bilateral agreements with the other states and territories.