



STATEMENT OF REASONS

Agreement between the Commonwealth of Australia and the Australian Capital Territory under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* relating to Environmental Impact Assessment

I, PETER ROBERT GARRETT, Minister for the Environment, Heritage and the Arts, provide the following reasons for my decision to enter into a bilateral agreement with Australian Capital Territory.

Legislative power

Section 45 of the EPBC Act authorises me, on behalf of the Commonwealth, to enter into a bilateral agreement with a state or a self-governing territory that is expressed to be a bilateral agreement and that provides for one or more of the following:

- protecting the environment;
- promoting the conservation and ecologically sustainable use of natural resources;
- ensuring an efficient, timely and effective process for environmental assessment and approval of actions; and
- minimising duplication of environmental assessment and approval processes through Commonwealth accreditation of state or territory processes (or vice versa).

A bilateral agreement may declare that actions that have been assessed in a specified manner need not be assessed under Part 8 of the EPBC Act ('section 47 declaration'). My approval under Part 9 of the Act is still required before such an action can proceed.

Consultation

In accordance with section 49A of the EPBC Act, a draft of the bilateral agreement was published on 24 May 2008 with an invitation for any person to comment. The comments received are described in the attached report. The comments were taken into account in the further negotiation of the draft bilateral agreement and in making my decision to enter into the final agreement.

Reasons

The bilateral agreement includes a section 47 declaration. The specified manner of assessment is set out in Schedule 1 to the agreement. This includes the environmental assessment process under the ACT

Planning and Development Act 2007, with additional criteria as described in Schedule 1.

I have concluded that the provisions of the bilateral agreement, and in particular the specified manner of assessment, will ensure that proper assessment of the relevant impacts of an action will take place, including adequate opportunity for public consultation and access to documents.

I have concluded that the Australian Capital Territory bilateral agreement will minimise duplication between the Commonwealth and the Australian Capital Territory environmental assessment processes and ensure that assessment of proposed actions occurs in a timely and efficient manner.

I am satisfied, therefore, that the bilateral agreement provides for the matters described in section 45(2)(a) of the EPBC Act.

I am satisfied that the specified manner of assessment will ensure:

- that the impacts an action has, will have or is likely to have on the matters protected by Part 3 of the EPBC Act will be assessed (subsection 47(2)); and
- that I will receive a report including, or accompanied by, enough information about those impacts to let me make an informed decision whether or not to approve the action under Part 9 of the EPBC Act (subsection 47(4)).

I am satisfied that the bilateral agreement accords with the objects of the EPBC Act (paragraph 50(a)).

In relation to the requirements of the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations), I am satisfied that the bilateral agreement:

- identifies each assessment approach and the approach under the EPBC Act to which it corresponds (regulation 3.02);
- provides for public access to assessment documentation (regulation 3.03), and
- provides for special arrangements for comment by particular needs groups (regulation 3.04).

I am satisfied that the specified manner of assessment meets the criteria in Schedule 1 to the EPBC Regulations (regulation 3.06).

In addition, I am satisfied that the bilateral agreement:

- is not inconsistent with Australia's obligations under any of the international agreements referred to in sections 51 to 54 of the EPBC Act;
- will promote the management of National Heritage in the Australian Capital Territory in accordance with Australian National Heritage management principles;

- will promote the management of world heritage properties in the Australian Capital Territory in accordance with the Australian World Heritage management principles;
- will promote the management of wetlands in the Australian Capital Territory in accordance with Australian Ramsar management principles; and
- will promote the survival and/or enhance the conservation status of listed threatened species and listed threatened ecological communities and of listed migratory species.

I have considered the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the bilateral agreement, taking into account Australia's relevant obligations under the Convention on Biological Diversity 1993 (the Biodiversity Convention) (paragraph 49A(c)).

Material on which my decision was based

The material on which I have based my decision was:

- the content of the assessment bilateral agreement;
- the relevant provisions of the EPBC Act and the EPBC Regulations;
- the relevant provisions of the Australian Capital Territory *Planning and Development Act 2007*;
- comments and information provided by the Australian Capital Territory Government in the course of negotiation of the bilateral agreement;
- comments received on the draft bilateral agreement published on 24 May 2008, in accordance with section 49A of the EPBC Act; and
- advice from my Department contained in a brief in April 2009, which included the bilateral agreement for my signature.

SIGNED

Peter Robert Garrett
Minister for the Environment, Heritage and the Arts

22 April 2009