

**AN AGREEMENT BETWEEN THE COMMONWEALTH OF
AUSTRALIA AND THE NORTHERN TERRITORY**

**UNDER SECTION 45 OF THE COMMONWEALTH
ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999**

RELATING TO ENVIRONMENTAL IMPACT ASSESSMENT

Aim

- 1 The agreement aims to minimise duplication of environmental impact assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation. In particular, this agreement provides for the accreditation of the Northern Territory environmental impact assessment processes (set out in Schedule 1) to ensure an integrated and coordinated approach for actions requiring approval from both the Commonwealth (under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*) and the Northern Territory. This agreement will therefore enable the Commonwealth to rely on the Northern Territory assessment process set out in Schedule 1 in assessing actions under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 2 The specific objects of this agreement are to contribute to:
 - (a) protecting the environment;
 - (b) promoting the conservation and ecologically sustainable use of natural resources;
 - (c) ensuring an efficient, timely, and effective process for environmental assessment and approval of actions; and
 - (d) minimising duplication in environmental assessment of relevant impacts within the meaning of section 82 of the *Environment Protection and Biodiversity Conservation Act 1999* through Commonwealth accreditation of Northern Territory processes.

Parties to the agreement

- 3 The parties to this agreement are the Northern Territory and the Commonwealth of Australia.

Term of agreement

- 4 The agreement will expire thirty years after it was entered into on 31 May 2002, noting that a review of the operation of the agreement must be carried out at least once every five years while the agreement remains in effect.

Nature of the agreement

- 5 This agreement is a bilateral agreement for the purposes of section 45 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 6 The parties note that, with the exception of clause 9, assessment means assessment of the relevant impacts, within the meaning of section 82 of the *Environment Protection and Biodiversity Conservation Act 1999*.
- 7 The parties note that any breach of the agreement will not give rise to any right of action, other than as prescribed in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, against the party in breach.

Effect of this agreement

8. Certain actions do not require assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*

8.1 Pursuant to subsection 47(1) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, it is declared that an action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if the action is assessed in the manner specified in Schedule 1 to this agreement.

8.2 Clause 8.1 applies to actions which are taken wholly within the Northern Territory, including its coastal waters. In relation to actions which are taken in more than one jurisdiction (including the Northern Territory), the parties agree to consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as the process set out in Schedule 1.

8.3 Consistent with section 49 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the parties note that the provisions of this bilateral agreement do not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency. However, the parties further note that discussions will take place between the Commonwealth and the Northern Territory in relation to implementing Attachment 3 of the COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment (“Compliance with State Environment and Planning Laws”). Following those discussions, the parties intend to amend this agreement, as necessary, so that it will apply to actions in a Commonwealth area, and actions taken by the Commonwealth or a Commonwealth agency, where it is agreed that those actions will be subject to State environment and planning laws.

8.4 Consistent with subsection 49(2) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the parties note that this bilateral agreement does not have any effect in relation to an action in Kakadu National Park or Uluru-Kata Tjuta National Park.

9. Northern Territory to ensure that impacts other than relevant impacts are assessed

9.1 This clause applies to an action that:

- (a) is a controlled action (as determined by the Commonwealth Environment Minister) taken or proposed to be taken in the Northern Territory; and
- (b) does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if an assessment is conducted in accordance with Schedule 1 of the agreement; and
- (c) is an action:
 - (i) taken or proposed to be taken by a constitutional corporation;
 - (ii) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and Territory, or between two Territories;
 - (iii) whose regulation is appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries; or

(iv) taken in the Northern Territory.

9.2 The Commonwealth undertakes that the written notice referred to in clause 11.2 will indicate:

(a) whether the Commonwealth believes that the action covered by the notice is an action to which this clause applies; and

(b) if so, which of paragraphs (i)-(iv) in clause 9.1(c) applies to the action.

9.3 The Northern Territory 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.

Procedures to be followed

10. Northern Territory to use best endeavours to encourage actions to be referred by persons taking the action.

10.1 The parties will work cooperatively to ensure that proponents are aware of their obligations under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and will use their best endeavours to encourage proponents to refer actions that are proposed to take place in the Northern Territory that may require approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to the Commonwealth Environment Minister.

10.2 The parties agree to develop administrative arrangements which will streamline the referral process for proponents. Where possible the parties will develop administrative arrangements which will allow proponents to simultaneously satisfy both Commonwealth and Northern Territory requirements. In this respect, the parties note that section 69 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* – which provides that a State or Territory or an agency of a State or Territory that is aware of a proposed action may refer the action to the Commonwealth Environment Minister – may, in appropriate cases, provide a mechanism for streamlining the referral process.

10.3 Subject to sections 69, 70 and 71 of Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the parties recognise that final responsibility for referring actions which may require approval from the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* lies with the person proposing to take the action. In making the undertakings set out in this clause, the parties do not accept any responsibility for the actions of proponents who may or may not choose to refer actions.

11 Commonwealth to inform Northern Territory of decision about whether a proposed action is a controlled action

11.1 This clause applies to an action or proposed action that is:

(a) referred to the Commonwealth Environment Minister under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and

(b) proposed to be taken in the Northern Territory.

11.2 For every decision by the Commonwealth Environment Minister that an action proposed to be taken in the Northern Territory is a controlled action, a written notice of the decision will be provided to the Northern Territory Environment Minister within ten business days of the decision being made.

12 Confirmation by Northern Territory that an accredited process will apply

12.1 This clause applies where:

- (a) the Northern Territory receives a written notice from the Commonwealth Environment Minister that an action proposed to take place in the Northern Territory is a controlled action; and
- (b) the action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if assessed in the manner specified in Schedule 1 to this agreement.

12.2 The Northern Territory undertakes that within ten business days of receiving the written notice referred to in clause 11.2, the Northern Territory Minister will indicate in a written notice given to the Commonwealth Environment Minister whether the action is expected to be assessed by the Northern Territory in the manner specified in Schedule 1 to this agreement.

12.3 If the Northern Territory Minister asks the Commonwealth Environment Minister, under section 79 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to reconsider the decision that the action is a controlled action, then the ten day period referred to in subclause 12.2 begins on the day that the Northern Territory receives the notice described in subsection 79(3) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. This notice, amongst other things, informs the Northern Territory of the outcome of the Commonwealth Environment Minister's reconsideration.

13 Assessment documentation

13.1 The Northern Territory undertakes that when an action is assessed in the manner specified in Schedule 1 to this agreement it will:

- (a) provide a copy of the Assessment Report or the Inquiry Report to the Commonwealth Environment Minister as soon as possible after the Report is accepted by the Northern Territory Minister; and
- (b) provide copies of any other assessment documentation relevant to the relevant impacts to the Commonwealth Environment Minister as soon as reasonably practicable (and in any event not more than ten business days) after the date on which the Assessment Report or the Inquiry Report is accepted by the Northern Territory Minister.

13.2 The Northern Territory may, when it provides the Assessment Report or the other assessment documentation referred to in clause 13.1, also provide assessment documentation relating to social and economic matters if such information will be relevant to the Commonwealth Environment Minister's considerations under section 136 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

13.3 The Northern Territory notes that the Commonwealth Environment Minister must decide whether or not to approve an action assessed under this agreement, and to attach any conditions to an approval, within 30 business days after receiving an Assessment Report from the Northern Territory which contains sufficient information to make an informed decision.

14. Additional information

If, in deciding whether to approve the taking of an action assessed under this agreement, the Commonwealth Environment Minister uses any information described in paragraph 136(2)(e) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth Environment Minister undertakes to provide a copy of this information to the Northern Territory Minister. The intention of this clause is to give the Northern Territory an opportunity to comment on the accuracy of this information before the Commonwealth Environment Minister decides whether to approve the taking of the action, subject to the requirements of section 130 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* relating to the time period within which the Commonwealth Environment Minister must decide whether to approve the action.

15. Monitoring compliance with conditions

15.1 Clauses 15, 16 and 17 apply where an action:

- (a) is taken in the Northern Territory; and
- (b) requires the approval of the Commonwealth Environment Minister under Part 9 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
- (c) requires approval (however described) under the Northern Territory *Waste Management and Pollution Control Act, Planning Act, Mining Act, Mining Management Act, Petroleum Act, Petroleum (Submerged Lands) Act, Water Act, Fisheries Act, or Aquaculture Act*.

15.2 The parties agree to cooperate in monitoring compliance with conditions relating to, or affecting, a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* attached to approvals, with the aim of reducing duplication. To this end the parties agree:

- (a) that each party will inform the other of any conditions attached to the approval(s) to take the action; and
- (b) that best endeavours will be used to put cooperative arrangements in place for monitoring compliance with conditions on any action which is approved by both parties. The aim of these arrangements is to ensure that reporting requirements for the proponent, and other monitoring efforts such as site inspections, are not duplicated.

16. Enforcing conditions on approvals

The parties agree to inform one another before commencing enforcement action against a person for breaching conditions of an approval for an action which has been approved by both parties, where the conditions relate to, or affect, a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*.

17. Conditions attached to an approval

The parties recognise the desirability of avoiding, to the extent practicable, attaching inconsistent conditions to approvals for an action under the *Environment Protection and Biodiversity Conservation Act 1999* and Northern Territory legislation. To this end the parties:

- (a) note that the Commonwealth Environment Minister is required by the provisions of section 134 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to consider any relevant Northern Territory conditions when deciding whether to attach a condition to an approval; and
- (b) agree to inform one another before varying the conditions attached to an approval for an action which has been approved by both parties, where the condition relates to, or affects, a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*. The parties also agree to inform one another of any such variation after it has been made.

18. Administrative procedures

The parties agree to jointly develop administrative procedures to ensure that the requirements of this agreement are administered efficiently in accordance with their separate legal requirements. The parties note that the administrative procedures will provide for consultation on draft assessment documentation including draft assessment reports. The administrative procedures will also include guidelines on the exchange of any information about assessments between Environment Australia and the relevant Northern Territory agency.

Maintaining the agreement

19. Monitoring compliance with the agreement

The parties recognise that, under the Commonwealth Auditor-General Act 1997, 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.

20. Reviewing the agreement

- 20.1 The Commonwealth Environment Minister is required by section 65 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to cause a review of the operation of this agreement to be carried out at least once every five years while the agreement remains in effect, and give a copy of each report of the review to the Northern Territory Minister.
- 20.2 The parties agree that:
 - (a) each review of this agreement under section 65 will be carried out jointly by the Commonwealth Department of the Environment and Water Resources and the relevant Northern Territory agency;
 - (b) each review will evaluate the operation of the agreement against the aim of the agreement; and
 - (c) the views of key stakeholders will be sought as part of each review.

21 Minor amendments to the agreement

- 21.1 The parties note that section 56A of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provides that the Commonwealth Environment Minister may make a written determination that the Commonwealth Environment Minister intends to develop a draft amendment to a bilateral agreement, where the Commonwealth Environment Minister is satisfied that the amendment will not have a significant effect on the operation of the bilateral agreement. Section 56A of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* also sets out a publication requirement where the Commonwealth Environment Minister makes a determination.
- 21.2 Prior to making such a determination the Commonwealth Environment Minister must reach agreement with the Northern Territory Minister on the wording of the amendment.

22 Cancelling or suspending the agreement

- 22.1 The parties note that sections 57 – 64 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provide that the Commonwealth Environment 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 – 64 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* also set out a process for consulting on the cancellation or suspension of all or part of this agreement.
- 22.2 In accordance with section 63 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* the Commonwealth Environment Minister must cancel or suspend all or part of this agreement at the request of the Northern Territory Minister, but only if the request is made in accordance with the agreement.
- 22.3 The parties agree that a request to cancel or suspend all or part of this agreement is made in accordance with this agreement if:
- (a) the request is made on the grounds that the Northern Territory Minister is not satisfied that the Commonwealth has complied or will comply with the agreement; or
 - (b) the request is made on the grounds that the Northern Territory Minister is not satisfied that the aim of the agreement is being achieved; and
 - (c) before making the request, the Northern Territory Minister has informed the Commonwealth Environment Minister in writing of the reason(s) for requesting the suspension and allowed a period of at least twenty business days for the Commonwealth Environment Minister to respond.

Exchange of information

23. Each party agrees to promptly comply with any reasonable request from the other party to supply information relating to the management or administration of assessments covered by this agreement

24. Where feasible, the parties agree that they may each use data within the control of the relevant departments of government of the other party for the purposes of meeting their respective responsibilities relating to the agreement or the assessment of environmental impacts under their respective Acts, and to make data available to the other. The parties agree that data 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, subject to clauses 28 and 30, data will not be used or communicated to any other person without the permission of the owner.

Conflict resolution

25. Acting in a spirit of cooperation, the parties agree:
- (a) in the event that any dispute arises under this agreement, the parties will aim to settle it by direct negotiation using their best endeavours; and
 - (b) discussions aimed at resolution will normally take place at senior officials level in the first instance.

This clause is subject to the rights and obligations of each party under relevant sections of the *Environment Protection and Biodiversity Conservation Act 1999* (including those sections dealing with cancellation and suspension of bilateral agreements).

26. The parties will notify and consult each other on matters that come to their attention that may improve the operation of this agreement.

Relevant plans and agreements

27. The parties note that a number of agreements and plans may be relevant to assessments under this agreement. The parties undertake that, when actions are assessed under this agreement, relevant agreements and plans will be taken into account as necessary. The parties agree that where the assessment covers impacts on:
- (a) World Heritage values of a World Heritage property, any management plan for the property is relevant;
 - (b) National Heritage values of a National Heritage place, any management plan for the place is relevant;
 - (c) the ecological character of a Ramsar wetland property, any management plan for the wetland is relevant;
 - (d) a listed threatened species or ecological community, any recovery plan for the species or community, and any threat abatement plan for a process that threatens the species or community is relevant;
 - (e) a listed migratory species, any wildlife conservation plan for the species is relevant.

Freedom of information legislation

28. If a party receives any request, including under Freedom of Information legislation, for any documents originating from another party which are not otherwise publicly available, the parties will consult on the release of those documents.

29. The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met without delay.

Public access to assessment documentation

30. The Northern Territory agrees that documentation relating to the assessment of each action which is assessed in the manner specified in Schedule 1 will be available to the public, except where corresponding information would not have been available to the public if the action had been assessed by the Commonwealth under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Groups with particular communication needs

31. The Northern Territory will, in giving effect to the requirements in Schedule 1, make special arrangements, as appropriate, to ensure that affected groups with particular communication needs have adequate opportunity to comment on actions assessed in the manner described in Schedule 1. The parties note that indigenous people affected by a proposed action may have particular communication needs, and will ensure, where appropriate, that affected indigenous people have adequate opportunity to comment on actions assessed in the manner described in Schedule 1.

Interpretation

32. A reference in this agreement to the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, the Northern Territory Environmental Assessment Act, or the Northern Territory Inquiries Act is a reference to the relevant Acts as in force at the date of this agreement. If any of the Acts are subsequently amended in a manner that affects the operation of this agreement, 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.
33. A reference in this agreement to an Act includes a reference to any regulations and instruments under that Act (including the Administrative Procedures made under section 7 of the Northern Territory Environmental Assessment Act).
34. A reference in this agreement to the impacts of an action (or the relevant impacts of an action), includes a reference to any impacts (or relevant impacts, as the case may be) of that action outside of the Northern Territory.
35. Unless the contrary intention appears, the terms used in this agreement have the same meaning as in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
36. Administrative Procedures means the Administrative Procedures made under section 7 of the Northern Territory Environmental Assessment Act.
37. Assessment documentation means any formal report, study, agreement, submission or correspondence prepared by or received as part of the formal assessment processes set out in Schedule 1. This includes draft reports or studies which would normally be publicly available under those assessment processes.
38. Assessment Report means the report prepared by the Northern Territory in accordance with item 6 of Schedule 1 to this agreement.

39. Commonwealth Environment Minister means the Minister administering the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and includes a delegate of the Minister.
40. Inquiry Report means a report prepared by a Board of Inquiry in accordance with item 6 in Schedule 1 to this agreement.
41. Northern Territory Minister means the Minister administering the Northern Territory Environmental Assessment Act and includes a delegate of the Minister.
42. Relevant Northern Territory agency means that Northern Territory government agency which is from time to time administering the Northern Territory Environmental Assessment Act.
43. Report means a public environment report prepared under the Northern Territory Environmental Assessment Act.
44. Statement means an environmental impact statement prepared under the Northern Territory Environmental Assessment Act.

Funding

45. The parties agree that, twelve months after the commencement of this agreement, and every twelve months thereafter until the expiry of this agreement, they will review the additional implementation costs that the Northern Territory may have incurred during the relevant twelve month period of the agreement. The Commonwealth agrees to reimburse the Northern Territory the additional implementation costs.
46. In clause 45, the additional implementation costs are the costs that the Commonwealth and the Northern Territory agree:
 - (a) have been incurred by the Northern Territory in implementing this agreement; and
 - (b) would not, in the absence of this agreement, have been incurred by the Northern Territory in carrying out an adequate assessment of each action to which Schedule 1 applies.

Signed for and on behalf of the
COMMONWEALTH OF
AUSTRALIA by:

Signed for and on behalf of the
NORTHERN TERRITORY by:

SIGNED

SIGNED

The Hon Dr David Kemp MP
Minister for the Environment and
Heritage

The Hon Kon Vatskalis MLA
Minister for the Environment

Date: 1 May 2002

Date: 31 May 2002

Schedule 1

Preamble

Subsection 47(1) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provides that a bilateral agreement may declare that actions need not be assessed under Part 8 of that Act if the actions have been ‘*assessed in a specified manner*’.

Clause 8.1 of this agreement declares that an action does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* if it is assessed in the manner specified in this Schedule.

The specified manner of assessment

For the purposes of clause 8.1 of this agreement, an action is assessed in the manner specified in this Schedule if it is assessed in accordance with the following requirements.

For the purposes of regulations made under section 50 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the manner of assessment specified in this Schedule provides for the following assessment approaches:

- (a) an Environmental Impact Statement (Statement) prepared under the *Environmental Assessment Act* – this assessment approach corresponds to assessment by environmental impact statement under the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) a Public Environment Report (Report) prepared under the *Environmental Assessment Act* – this assessment approach corresponds to assessment by public environment report under the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (c) an Inquiry carried out under the *Northern Territory Inquiries Act* – this assessment approach corresponds to assessment by inquiry under the *Environment Protection and Biodiversity Conservation Act 1999*.

1 Law under which the assessment has been carried out

The action is assessed:

- (a) under the Northern Territory Environmental Assessment Act, or
- (b) by an inquiry carried out under the Northern Territory Inquiries Act.

2 Selecting the assessment approach

2.1 The Northern Territory Minister decides:

- (a) under paragraph 8 of the Administrative Procedures, that:
 - (i) the preparation of a Report is necessary; or
 - (ii) the preparation of a Statement is necessary; or
- (b) for the purposes of section 10 of the Environmental Assessment Act, that an inquiry shall be conducted under the Inquiries Act.

2.2 When making the decision referred to in clause 2.1, the Minister has information that he or she considers to be sufficient and considers criteria equivalent to those set out in guidelines (if any) issued under section 87(6) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (to the extent relevant to the decision whether it is appropriate to use an approach corresponding to a public environment report, or an environmental impact statement, or an inquiry).

3 Guidelines for assessment

3.1 Where the action is assessed by the preparation of a Statement or Report, the Northern Territory Minister prepares in accordance with the Administrative Procedures a written description of matters relating to the environment ('guidelines') which are to be dealt with in the Statement or Report. The description ensures that the assessment:

- (a) assesses all relevant impacts that the action has, will have or is likely to have;
- (b) contains enough information about the action and its relevant impacts to allow the Commonwealth Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*;
- (c) if a Report is being prepared, addresses the matters prescribed in regulations for the purposes of paragraph 97(2)(b) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* relating to the preparation of guidelines for a draft public environment report under that Act; and
- (d) if a Statement is being prepared, addresses the matters prescribed in regulations for the purposes of paragraph 102(2)(b) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* relating to the preparation of guidelines for a draft environmental impact statement under that Act.

3.2 Where a proposed action is assessed under the *Inquiries Act*:

- (a) the instrument of appointment issued under section 4 of that Act ensures that:
 - (i) the inquiry assesses relevant impacts on the matters protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (ii) the report of the inquiry contains enough information about the action and its relevant impacts to allow the Commonwealth Environment Minister to make an informed decision whether or not to approve the decision; and
- (b) the terms of reference are published in accordance with clause 7.

4 Setting the public comment period

If the action is being assessed by the preparation of a Report or a Statement, the Report or Statement is prepared in accordance with the guidelines and is released for public comment, and the public is given at least 28 days to provide comments to the Northern Territory Minister on the action or on the Report or Statement. During this period (the public comment period):

- (a) copies of the Report or Statement are available for public inspection; and
- (b) copies of the Report or Statement are available for purchase.

Before the public comment period begins, notice is given by public advertisement of the availability of copies of the Report or Statement and the opportunity for the public to provide comments.

5 Responding to public submissions

If the action is being assessed by the preparation of a Report or a Statement, the proponent prepares, and submits to the Northern Territory Minister, a written statement which

- (a) summarises issues relating to the relevant impacts of the proposed action raised in submissions received during the public comment period referred to in clause 4 of this Schedule; and
- (b) addresses, to the greatest extent practicable, those issues.

6 Assessment reports

6.1 The Northern Territory Minister prepares an Assessment Report (if the action is assessed by preparation of a Statement or Report) or the Board of Inquiry produces an Inquiry Report (if the action is assessed by an inquiry).

6.2 The Assessment Report takes into account:

- (a) the Report or Statement (as the case may be);
- (b) any comments provided by the public during the public comment period;
- (c) the statement submitted by the proponent under Clause 5 of this Schedule; and
- (d) any other relevant information available to the Northern Territory Minister.

6.3 The Assessment Report, or Inquiry Report, contains enough information about the relevant impacts of the action to let the Commonwealth Environment Minister make an informed decision whether or not to approve the taking of the action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, including:

- (a) a description of:
 - (i) the action; and
 - (ii) the places affected by the action; and
 - (iii) any matters of national environmental significance that are likely to be affected by the action; and
- (b) a summary of the relevant impacts of the action; and
- (c) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on relevant matters of national environmental significance proposed by the proponent or suggested in public submissions; and
- (d) 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 matters of national environmental significance; and

- (e) a statement of conditions for approval of the action that may be imposed to address identified impacts on matters of national environmental significance; and
- (f) a statement of State or Territory approval requirements and conditions that apply, or are proposed to 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.

7 Inviting public comment/advertising

- 7.1 When the public is invited to comment on draft assessment documents or guidelines, or terms of reference for an inquiry are advertised, the invitation or terms of reference are published in newspapers circulating generally in each State and self-governing Territory.
- 7.2 The advertisements include: the name of the action, a brief description of the action, its location(s), what matters are protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the name of the person proposing to take the action, the name of the designated proponent (if not the person intending to take the action), how any relevant documents may be obtained, and any deadline for public comments.