

**AN AGREEMENT BETWEEN THE COMMONWEALTH OF
AUSTRALIA AND THE STATE OF SOUTH AUSTRALIA**

**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 co-operation and promote a partnership approach to environmental protection and biodiversity conservation. In particular, this Agreement provides for the accreditation of the South Australian 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 State of South Australia. This agreement will therefore enable the Commonwealth to rely primarily on the South Australian process set out in Schedule 1 in assessing actions under the *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 Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* through Commonwealth accreditation of the South Australian Major Development assessment process conducted pursuant to Division 2 of Part 4 of the South Australian *Development Act 1993*.

Note: The provisions of this bilateral agreement are to be read in conjunction with the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Parties to the agreement

3. The parties to this agreement are the State of South Australia and the Commonwealth of Australia.

Term of Agreement

4. This agreement will commence on the date on which the agreement is executed.
5. The agreement will expire thirty years after commencement, 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

6. This agreement is a bilateral agreement made under section 45 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
7. The parties note that, other than in clause 10, assessment means assessment of the relevant impacts, within the meaning of section 82 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
8. The parties do not intend this agreement to create contractual or other legal obligations between the parties, or that a breach of the agreement will give rise to any cause of action, or right to take legal proceedings, other than as provided for in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Effect of this agreement

9. Certain actions do not require assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
- 9.1 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 described in Schedule 1 to this agreement.
- 9.2 Clause 9.1 applies to actions which are taken wholly within the State of South Australia, including its coastal waters. In relation to actions taken in more than one jurisdiction (including South Australia), the parties agree to 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.
- 9.3 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 South Australia 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.

9.4 The parties note that, in relation to actions which are to be assessed by the State of South Australia using an assessment process other than an assessment approach set out in Schedule 1 to this agreement, this bilateral agreement does not preclude the Commonwealth Environment Minister deciding on assessment by an accredited assessment process pursuant to paragraph 87(1)(a) of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, where the accredited assessment approach meets the criteria mentioned in Schedule 1 to the Commonwealth *Environment Protection and Biodiversity Conservation Regulations 2000*.

10 South Australia to ensure that impacts on matters that are not of national environmental significance are assessed

10.1 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 South Australia, and
- (b) does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* because of this agreement and section 83 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, 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 or Territory, or between two Territories; or
 - (iii) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

10.2 The Commonwealth undertakes that the written notice referred to in clause 12.2 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)-(iii) in clause 10.1(c) applies to the action

10.3 The State of South Australia 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.

10.4 The parties agree that 'greatest extent practicable' in clause 10.3 is satisfied where the assessment of environmental impacts (other than the relevant impacts) has been undertaken using a Major Development assessment process conducted pursuant to Division 2 of Part 4 of the South Australian *Development Act 1993*.

Procedures to be followed

- 11 South Australia to use best endeavours to ensure that actions are referred
- 11.1 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 State of South Australia that may require approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to the Commonwealth Environment Minister.
- 11.2 The parties recognise that, as the majority of development applications in South Australia are dealt with by local government, the use of best endeavours by the State of South Australia in clause 10.1 will involve the State of South Australia making local councils aware of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* as part of its information and awareness program.
- 11.3 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 State 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 agency of a State 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.
- 11.4 Subject to sections 69, 70 and 71 of the 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.

12 Commonwealth to inform South Australia of decision about whether a proposed action is a controlled action

12.1 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 South Australia.

12.2 The Commonwealth undertakes that the Commonwealth Environment Minister will give written notice of his or her decision whether the action is a controlled action to the South Australian Minister within ten business days of making the decision.

13 Confirmation by South Australia that an accredited process will apply

13.1 This clause applies where:

- (a) the State of South Australia receives a written notice from the Commonwealth Environment Minister that an action proposed to take place in South Australia 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.

13.2 The State of South Australia undertakes that as soon as practicable after receiving the written notice referred to in clause 12.2, the South Australian Minister will indicate in a written notice given to the Commonwealth Environment Minister whether the action will be assessed by South Australia in the manner specified in Schedule 1 to this agreement.

13.3 If the South Australian 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 13.2 begins on the day that the State 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 State of the outcome of the Commonwealth Environment Minister's reconsideration.

14 Assessment documentation

- 14.1 The State of South Australia undertakes that when an action is assessed in the manner specified in Schedule 1 to this agreement it will:
- (a) if an EIS or PER is prepared, provide a copy of the Assessment Report to the Commonwealth Environment Minister on or before the date on which:
 - (i) the South Australian Minister first notifies a person under section 46B(10) or section 46C(10) of the *Development Act 1993* (whichever is relevant) of the availability of the Assessment Report; or
 - (ii) the public advertisement is given under section 46B(10) or section 46C(10) of the *Development Act 1993*; whichever is earlier; and
 - (b) if a Development Report is prepared, provide a copy of the Assessment Report to the Commonwealth Environment Minister as soon as possible after the South Australian Minister has prepared the Assessment Report; and
 - (c) in all cases provide copies of any other assessment documentation pertaining 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 is prepared by the Minister.
- 14.2 The State of South Australia may, when it provides the Assessment Report or the other assessment documentation referred to in clause 14.1, also provide additional information on social and economic matters if such information will be relevant to the Commonwealth Environment Minister's decision whether to approve the action under section 136 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

15 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 South Australian Minister. The intention of this clause is to give the State of South Australia 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.

16 Monitoring compliance with conditions

16.1 This clause applies where an action:

- (a) is taken in South Australia, 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 South Australian legislation.

16.2 The parties agree to cooperate in monitoring compliance with conditions 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 project 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.

17 Enforcing conditions on approvals

The parties agree to inform one another before commencing action to prosecute 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 of national environmental significance.

18 Conditions attached to an approval

The parties recognise the need to avoid attaching inconsistent conditions to approvals and will avoid, to the extent practicable, attaching different conditions to approvals in relation to the protection of matters of national environmental significance for an action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and South Australian legislation. To this end the parties:

- (a) agree where practicable to consult on the conditions to be attached to approvals granted by either party;
- (b) note the provisions of section 134 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, which include a requirement for the Commonwealth Environment Minister to consider any relevant State conditions when deciding whether to attach a condition to an approval, and

- (c) 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 of national environmental significance. The parties also agree to advise one another of any such variation after it has been made.

19 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 the Commonwealth Department of the Environment and Water Resources and the Department supporting the South Australian Minister.

Maintaining the agreement

20 Monitoring compliance with the agreement

The parties recognise that, under the Commonwealth *Auditor-General Act 1997*, the Commonwealth Auditor-General may audit the operation of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this agreement, including whether the Commonwealth is meeting its obligations under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* by relying on South Australian processes accredited under this agreement.

21 Reviewing the agreement

21.1 The parties note that section 65 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* requires the Commonwealth Environment Minister 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 the report of each review to the South Australian Minister.

21.2 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 Department supporting the South Australian Minister,
- (b) each review will evaluate the operation of the agreement against the object of the agreement, and
- (c) the views of key stakeholders will be sought as part of each review.

22 Minor amendments to the agreement

- 22.1 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 requirements where the Commonwealth Environment Minister makes a determination.
- 22.2 Prior to making such a determination the Commonwealth Environment Minister must reach agreement with the South Australian Minister on the wording of the amendment.

23 Cancelling or Suspending the agreement

- 23.1 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.
- 23.2 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 South Australian Minister, but only if the request is made in accordance with the agreement.
- 23.3 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 South Australian 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 South Australian Minister is not satisfied that the object of the agreement is being achieved; and
 - (c) before making the request, the South Australian 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

- 24 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.
- 25 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 29 and 31, data will not be used or communicated to any other person without the permission of the owner.

Conflict resolution

- 26 In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance. This clause does not purport to limit the rights and obligations of each party under relevant sections of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (including those sections dealing with cancellation and suspension of bilateral agreements).
- 27 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

- 28 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

- 29 If a party receives any request, including under Freedom of Information legislation, for any documents originating from the other party or from a third party, which are not otherwise publicly available, the parties to this agreement will consult on the release of those documents.
- 30 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

- 31 The parties agree that documentation relating to the assessment of each action which is assessed in the manner specified in Schedule 1, which would be publicly available under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the laws of South Australia, will be made available to the public in accordance with the provisions set out in Schedule 1 to this agreement.

Groups with particular communication needs

- 32 The State of South Australia will, in giving effect to the requirements in Schedule 1, make special arrangements, if 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.

Funding

- 33 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 (including the costs of advertising in a newspaper circulating in every State and Territory in accordance with Schedule 1) that the State of South Australia may have incurred during the relevant twelve month period of the agreement.

The Commonwealth agrees to reimburse the State of South Australia the additional implementation costs.

- 34 In clause 33, the additional implementation costs are the costs that the Commonwealth and State of South Australia agree:
- a) have been incurred by the State of South Australia in implementing this agreement; and
 - b) would not, in the absence of this agreement, have been incurred by State of South Australia in carrying out an adequate assessment of each action to which Schedule 1 applies.

Interpretation

- 35 A reference in this agreement to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, or the South Australian *Development Act 1993*, 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.
- 36 A reference in this agreement to an Act includes a reference to any regulations and instruments made under that Act.
- 37 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 State of South Australia.
- 38 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*.
- 39 **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.
- 40 **Assessment Report** means the report prepared in accordance with item 6 in Schedule 1 to this Agreement.
- 41 **Commonwealth Environment Minister** means the Minister administering the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* or a delegate of the Minister.

42 **Development Assessment Commission** means the Development Assessment Commission established under section 10 of the South Australian *Development Act 1993*.

43 **South Australian Minister** means the Minister administering the South Australian Development Act 1993.

Signed for and on behalf of the
State of South Australia by:

Signed for and on behalf of the
Commonwealth by:

SIGNED

SIGNED

Paul Holloway
Minister for Urban Development
and Planning

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

Date: 2/7/2008

Date: 28/3/2008

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 9.1 of this bilateral 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 9.1 of this bilateral agreement, an action is assessed in the manner specified in this Schedule if it is assessed in accordance with the requirements set out below.

For the purposes of regulations made under section 50 of the *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 prepared under the *Development Act 1993* – 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 prepared under the *Development Act 1993* - this assessment approach corresponds to assessment by a public environment report under the *Environment Protection and Biodiversity Conservation Act 1999*, and
- (c) a Development Report prepared under the *Development Act 1993* – this assessment approach corresponds to assessment by a public environment report under the *Environment Protection and Biodiversity Conservation Act 1999*

1 Law under which assessments to be carried out

The assessment is carried out under Division 2 of Part 4 of the *Development Act 1993*.

2 Selecting the Assessment Approach

2.1 The Development Assessment Commission determines (under section 46 of the *Development Act 1993*) that the action will be subject to the processes and

procedures prescribed by the *Development Act 1993* with respect to the preparation of:

- (a) an Environmental Impact Statement (EIS); or
- (b) a Public Environment Report (PER), or
- (c) a Development Report (DR).

2.2 In making the determination referred to in clause 2.1, the Development Assessment Commission considers criteria equivalent to the criteria set out in the guidelines (if any) issued under subsection 87(6) of the *Environment Protection and Biodiversity Conservation Act 1999* (to the extent relevant to the decision whether it is appropriate to use an approach corresponding to assessment on preliminary documentation, a public environment report, or an environmental impact statement).

3 Guidelines for assessment

The Development Assessment Commission formulates guidelines for the preparation of the EIS, or the PER, or the DR (as the case may be) and the guidelines ensure 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 PER or DR is being prepared, addresses the matters (if any) 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 an EIS is being prepared, addresses the matters (if any) 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.

4. Setting the Public Comment Period

The EIS, or PER, or DR (as the case may be) is released for public comment, and the public is given at least 28 business days to provide comments to the South Australian Minister on the action or on the EIS, or PER, or DR. During this period (the public comment period):

- (a) copies of the EIS, or the PER, or the DR are available for public inspection; and
- (b) copies of the EIS, or the PER, or the DR are available for purchase.

Prior to the beginning of the public comment period, notice is given by public advertisement of the availability of copies of the EIS, or PER, or DR and the opportunity for the public to provide comments.

5. Responding to Public Comments

The proponent prepares

- (a) a revised PER or a revised EIS, or a revised DR; or
- (b) a supplement to the PER or EIS, or DR;

taking into account the public submissions (if any) relating to the relevant impacts of the action which are received during the public review period. The revised PER or revised EIS, or revised DR, or the supplement to the PER or EIS, or DR, is submitted to the Major Developments Panel.

6. Assessment reports

6.1 The South Australian Minister prepares an Assessment Report under subsection 46B(9) (in relation to an EIS), or subsection 46C(9) (in relation to a PER), or subsection 46D(8) (in relation to a DR) and provides a copy of the Report to the Commonwealth Environment Minister.

6.2 In preparing the Assessment Report, the South Australian Minister takes into account:

- (a) the PER, the EIS or the DR (as the case may be); and
- (b) any comments provided by the public during the public review period; and
- (c) information provided by the proponent under clause 5 of this Schedule.

6.3 The Assessment Report includes:

- (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. Advertising and Consultation

- 7.1 When the public is invited to comment on draft assessment documents, the invitation is published in newspapers circulating generally in each State and Territory.
- 7.2 The advertisements will advise the nature of the proposal, its location(s), the matters of national environmental significance covered by the assessment, how the relevant documents may be obtained, and the deadline for public comments.