

REPORT ON COMMENTS

As required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the draft assessment bilateral agreement between the Commonwealth of Australia and the State of Victoria was published on 11 October 2008 with an invitation for any person to comment.

Six submissions were received on the draft assessment bilateral agreement:

1. Victorian National Parks Association
2. Brad Jessup, Teaching Fellow at the Australian National University, College of Law
3. Ann Jelinek, Ecoviews
4. Environment Defenders Office Inc (VIC)
5. Professor Lee Godden, Associate Professor Jacqueline Peel and Ms Anne Kallies, University of Melbourne Law School
6. Neil Duncan

Submissions 1 - 6 suggested that there were limitations and deficiencies in the existing Victorian legislative framework for environmental impact assessment processes. Submissions 1, 4 and 5 also commented that this Victorian legislation should be updated and improved prior to the Commonwealth entering into a bilateral agreement on assessment processes.

Response: The provisions of the Victorian legislation relating to environmental impact assessment processes meet the requirements for accreditation under the EPBC Act. The relevant legislation (as set out in Schedule 1 of the agreement) affords adequate certainty in relation to the assessment processes, while maintaining the flexibility for appropriate handling of individual assessments. Actions which are regulated under the EPBC Act and do not fall within the scope of the agreement will continue to be assessed under the EPBC Act.

The agreement is intended to promote principles of cooperation between the parties and streamline the assessment process and does not limit the parties' ability to improve the quality of environmental impact assessment.

Submissions 5 and 6 commented that there may be the opportunity for bias and a lack of transparency in the assessment decisions of the Victorian government, particularly due to the wide discretion the Victorian Minister has to set the terms of reference of the assessment.

Response: There is sufficient transparency in relation to the assessment processes. The assessment processes accredited under this agreement are those processes which compare sufficiently with equivalent processes under the EPBC Act. The Commonwealth Minister maintains the final decision making power to approve or refuse an action assessed under the agreement.

Submissions 1, 2, 4 and 5 expressed concerns that the processes under Victorian legislation proposed for accreditation do not accord with the objectives and principles of the EPBC Act and do not meet the same rigorous standard of environmental assessment as set out in the EPBC Act.

Response: The proposed agreement accredits Victorian environmental assessment processes where those processes are sufficiently comparative with equivalent processes

under the EPBC Act. Where the Commonwealth Environment Minister is not satisfied that the agreement is being complied with or where assessment processes accredited under the agreement are not giving effect to the agreement in a way which accords with the EPBC Act, sections 57-64 of the Act provide a mechanism by which the agreement can be cancelled or suspended. There is also a mechanism for review of the agreement (clause 21), once every five years.

Submission 1 commented that the assessment processes to be accredited by the agreement contain limited opportunity for public consultation as a public hearing is not mandatory under the current legislation.

Response: Neither the legislation nor the agreement prevent a public hearing being undertaken. The public is invited to comment on the environmental effects statement (EES) prepared under the *Environment Effects Act 1978* (Vic). The agreement does not impose an obligation for a public hearing for every assessment as this may create an excessive regulatory burden. Where an inquiry is not held, the proponent must prepare a supplement to the EES, taking into account any public submissions (Schedule 1, Part B (6)).

Submission 1 commented that the agreement does not cover strategic assessments.

Response: The agreement is not intended to cover strategic assessments under the EPBC Act. Strategic assessments are a separate process under Part 10 of the EPBC Act and this agreement does not limit the way in which parties continue to work closely to identify and utilise appropriate opportunities for strategic assessments to be conducted.

Submissions 1 and 5 commented on the relationship between the assessment processes under the agreement and the *Water Act 1989* (Vic) and how this interaction would be managed.

Response: Under the agreement, the Panel appointed under the *Water Act 1989* must prepare a report on the application under that Act which is to contain information about the impacts of the action in order to allow the Commonwealth Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the EPBC Act (Schedule 1, Part F (5)).