

**AN AGREEMENT BETWEEN THE COMMONWEALTH OF  
AUSTRALIA AND THE STATE OF WESTERN  
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 and strengthen intergovernmental cooperation. In particular, this agreement provides for the accreditation of the Western Australian environmental impact assessment process (set out in Schedule 1) to ensure an integrated and coordinated approach for actions requiring approval under both Commonwealth (the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*) and Western Australian (the Western Australian *Environmental Protection Act 1986*) legislation.
- 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 Western Australian processes.

## **Parties to the agreement**

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

## **Term of agreement**

- 4 The Agreement will expire thirty years after it was entered into on August 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. 16

## **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 Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.
- 7 The parties do not intend this agreement to create contractual or other legal obligations, 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**

### 8 Certain actions do not require assessment under Part 8 of 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 Western Australia including its coastal waters. In relation to actions which are taken in more than one jurisdiction (including Western 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 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 taken by the Commonwealth or a Commonwealth agency.
- 8.4 The parties agree that discussions will take place between the Commonwealth and Western 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”).
- 8.5 Following these discussions, the parties intend to amend this agreement, as necessary, so that its provisions 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 Western Australia to provide a notice under s.130(1B)(b) that environmental impacts other than the relevant impacts have been assessed to the greatest extent practicable

- 9.1 This clause only applies to an action that:
- (a) is a "controlled action" (as determined by the Commonwealth Environment Minister) taken or proposed to be taken in Western Australia;
  - (b) does not require assessment under Part 8 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* because an assessment is conducted in the manner specified in Schedule 1 of this 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 a 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.

9.2 The State of Western 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.

### **Procedures to be followed**

#### **10 Western Australia to use best endeavours to encourage proponents to refer actions**

10.1 Western Australia, to assist proponents and the Commonwealth, will use its best endeavours to encourage proponents to refer to the Commonwealth Environment Minister actions that are proposed to take place in Western Australia that are likely to require approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

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 State requirements.

10.3 Subject to sections 69, 70 and 71 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, the parties recognise that 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.

10.4 The parties are not responsible for the actions of proponents who may or may not choose to refer actions.

#### **11 Commonwealth to inform Western Australia 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 Western Australia.

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

## 12 Advice from Western Australia that an accredited process will apply

12.1 This clause applies where:

- (a) pursuant to clause 11.2, Western Australia receives a written notice from the Commonwealth Environment Minister that an action proposed to be taken in Western 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 it is assessed in the manner specified in Schedule 1 to this agreement.

12.2 Western Australia agrees that as soon as practicable after receiving the written notice referred to in clause 11.2, the Western Australian Environment Minister will indicate in a written notice given to the Commonwealth Environment Minister whether the action is expected to be assessed by Western Australia in the manner specified in Schedule 1 to this agreement.

12.3 The parties note that the Western Australian Environment Minister may ask 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.

12.4 If the Western Australian Environment Minister indicates in writing that the action will not be assessed as a proposal by Western Australia under the Western Australian *Environmental Protection Act 1986*, then this agreement does not apply to that action.

## 13 Assessment documentation

13.1 When an action is assessed in the manner specified in Schedule 1 to this agreement Western Australia will:

- (a) provide a copy of the Assessment Report to the Commonwealth Environment Minister on or before the date on which the Report is published under section 44 of the Western Australian *Environmental Protection Act 1986*; and
- (b) provide copies of other assessment documentation pertaining to relevant impacts to the Commonwealth Environment Minister as soon as reasonably practicable (but no more than ten business days) after the date on which the Assessment Report is published.

13.2 Western Australia may, when it provides the Assessment Report or the other assessment documentation referred to in clause 13.1, also provide additional

information on social and economic matters to the Commonwealth Environment Minister. The parties note that the Commonwealth Environment Minister will consider such information in accordance with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

- 13.3 Western Australia 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 Western Australia which contains sufficient information to make an informed decision.

#### 14 Additional information

- 14.1 If, in deciding whether to approve the taking of an action assessed under this agreement, the Commonwealth Environment Minister uses any information described in section 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 Western Australian Environment Minister.

- 14.2 The Commonwealth Environment Minister agrees to give Western Australia an opportunity to comment on the accuracy of this information, subject to the requirements in 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 This clause applies where an action:
- (a) is taken in Western Australia;
  - (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 Western Australian *Environmental Protection Act 1986*.
- 15.2 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 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 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 protected by Part 3 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

17 Varying 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 Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and Western Australian 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 State 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 Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The parties also agree to advise one another of any such variation after it has been made.

18 Administrative procedures

The parties agree to jointly develop administrative procedures, as required, to ensure that the requirements of this agreement are administered efficiently in accordance with their legal requirements. The administrative procedures may include guidelines on the exchange of any information about assessments, including consultation on draft assessment documentation.

**Maintaining the agreement**

19 Monitoring compliance with the agreement

The parties recognise that, under the Commonwealth *Auditor-General Act 1997*, the 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 Western Australian 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 Western Australian 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 Western Australian Minister on the wording of the amendment.

22 Cancelling or suspending the agreement

22.1 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 Section 63 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* requires the Commonwealth Environment Minister at the request of the Western Australian Environment Minister to cancel or suspend all or part of this agreement at the request of the Western Australian Environment Minister, but only if the request is made in accordance with the agreement.

- 22.3 A request by the Western Australian Environment Minister under section 63 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* 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 Western Australian Environment 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 Western Australian Environment Minister is not satisfied that the aim of the agreement is being achieved; and
  - (c) before making the request, the Western Australian Environment 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.

### **Transfer of information**

- 23 Each party agrees to comply promptly with any reasonable request from the other party to supply information relating to the management or administration of assessments covered by this agreement.
- 24 The parties agree that they can utilise data within the control of the departments of government of the other party for the purpose of meeting their respective responsibilities relating to this agreement including the assessment of environmental impacts under this agreement. Furthermore:
- (a) the parties recognise that data are held in different formats including electronic;
  - (b) this agreement applies only to data in existence at the time of the request and in the format held by the custodian;
  - (c) Western Australian Government agencies will participate in the transfer of information consistent with the Western Australian Land Information System Pricing and Transfer Policies which provide for, inter alia, the transfer of information at no cost. For the purposes of these Policies and this clause, the parties agree that the Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment as agreed by the Council of Australian Governments in 1997 comprises an agreed national program;
  - (d) the parties recognise that some data are, and will need to remain, confidential;
  - (e) the parties agree that the data transferred will be held securely to prevent unauthorised access;
  - (f) the parties agree that subject to clauses 28 and 30, data will not be transferred, used or communicated to any other person without the authorisation of the data custodian;
  - (g) the parties agree that the data will remain the property of the custodian;

- (h) the parties agree to use their best endeavours to ensure that data are not used inappropriately, particularly in relation to spatial resolution and attribute accuracy, and to the compilation and integration of data-sets of widely differing scales; and
- (i) the parties agree that transfer and use of data will be subject to such licence conditions as may be agreed, including addressing, as necessary, (a) to (h) (above).

### **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 settle it by direct negotiation using their best endeavours;
  - (b) discussions aimed at resolution will normally take place at senior officials level in the first instance; and
  - (c) this clause is subject to 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).
- 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 agree 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; or
  - (b) National Heritage values of a National Heritage place, any management plan for the place is relevant; or
  - (c) the ecological character of a Ramsar wetland property, any management plan for the wetland is relevant; or
  - (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; or
  - (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.

### **Public access to assessment documentation**

- 30 Western Australia 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*.

### **Public comment – particular needs groups**

- 31 Western Australia will, in giving effect to the requirements in Schedule 1, make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to comment on actions assessed in the manner specified 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 reasonable 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* or the Western Australian *Environmental Protection Act 1986* is a reference to the relevant Act as in force at the date of this agreement. If either Act is 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).
- 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 Western Australia.
- 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 **Assessment Documentation** means any formal report, study, agreement, submission or correspondence prepared by or received by Western Australia 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 the State's assessment process.
- 37 **Assessment Report** means the report prepared by the Western Australian Environmental Protection Authority for the purposes of section 44 of the Western Australian *Environmental Protection Act 1986* to the extent it addresses the relevant impacts of a controlled action assessed in the manner specified in Schedule 1.
- 38 **Commonwealth Environment Minister** means the Minister administering the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the Minister.
- 39 **Environmental Review and Management Programme (ERMP)** has the same meaning as in the Administrative Procedures made under section 122 of the Western Australian *Environmental Protection Act 1986*.
- 40 **Public Environmental Review (PER)** (under the Western Australian *Environmental Protection Act 1986*) has the same meaning as in the Administrative Procedures made under section 122 of the Western Australian *Environmental Protection Act 1986*.
- 41 **Western Australian Environment Minister** means the Minister administering the Western Australian *Environmental Protection Act 1986* and includes a delegate of the Minister.

## **Funding**

- 42 The parties agree that, 12 months after the commencement of this agreement, and every 12 months thereafter until the expiry of the agreement, they will review the additional implementation costs that Western Australia may have incurred during the relevant 12 month period of the agreement. The Commonwealth agrees to reimburse Western Australia the additional implementation costs.
- 43 In clause 42, the additional implementation costs are the costs that the Commonwealth and Western Australia agree:
- (a) have been incurred by Western Australia in implementing this agreement;
  - and

(b) would not, in the absence of this agreement, have been incurred by Western Australia in carrying out an adequate assessment of each action to which the Schedule applies.

*SIGNED*

The Hon Dr David Kemp MP

Minister for the Environment and  
Heritage

Date: 2002

*SIGNED*

The Hon Dr Judy Edwards MLA

Minister for the Environment and  
Heritage

Date: 16 August 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 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 8.1 of this bilateral 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) preparation of a Public Environmental Review (PER) under the Western Australian *Environmental Protection Act 1986* – this assessment approach corresponds to assessment by public environment report under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) preparation of an Environmental Review and Management Programme (ERMP) under the Western Australian *Environmental Protection Act 1986* – this assessment approach corresponds to assessment by environmental impact statement under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

### 1 Law under which the assessment has been carried out

The assessment is carried out by the State of Western Australia under Division 1 of Part IV of the Western Australian *Environmental Protection Act 1986*.

### 2 Selecting the assessment approach

- 2.1 The Western Australian Environmental Protection Authority (the EPA) determines, for the purposes of section 40 of the Western Australian *Environmental Protection Act 1986*, that:
  - (a) the proposed action should be assessed by it; and
  - (b) the proponent is required to undertake an environmental review and the level of assessment for that environmental review is either a PER or ERMP.
- 2.2 When deciding whether the proposed action is to be assessed using a PER or a ERMP, the EPA has information that it considers to be sufficient and considers

criteria equivalent to the criteria set out in the guidelines (if any) issued under subsection 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 assessment by a public environment report, or an environmental impact statement).

### 3 Guidelines for assessment

- 3.1 The EPA will prepare written guidelines to 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 the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*;
  - (c) if a PER is being prepared, addresses the matters prescribed in regulations for the purposes of section 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 ERMP is being prepared, addresses the matters prescribed in regulations for the purposes of section 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 If the proposed action is assessed using a PER or an ERMP, the EPA publishes draft guidelines and seeks public comment on the draft guidelines before they are finalised if, at the time the guidelines are being prepared:
- (a) the EPA believes the issues to be addressed in the assessment will be complex or there will be a high level of public interest in the issues;
  - (b) the Commonwealth Environment Minister has requested the publication of draft guidelines; or
  - (c) the EPA considers that for any other reason it is appropriate to do so.

### 4 Setting the public review period

The public review period for both a PER and an ERMP for the purposes of section 8 of the Administrative Procedures is at least 28 days.

### 5 Inviting public comment

- 5.1 When the public is invited to comment during the public review period for a PER or an ERMP, the invitation is published in newspapers circulating generally in each State and Territory.
- 5.2 When the public is invited to comment on the draft guidelines for a PER or ERMP, as set out in clause 3.2 of this Schedule, the invitation is published in newspapers circulating generally in each State and Territory.

- 5.3 The advertisements include: the name of the action, a brief description of the action, its location(s), what matters are protected by a provision of 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), and how the relevant documents may be obtained and the deadline for public comments.

## 6 Responding to public submissions

If a PER or an ERMP is prepared, the proponent prepares for the purposes of section 40(6)(b) of the Western Australian *Environmental Protection Act 1986*:

- (a) a revised PER or a revised ERMP; or
  - (b) a supplement to the PER or ERMP,
- 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 ERMP, or the supplement to the PER or ERMP, is submitted to the EPA.

## 7 Assessment reports

- 7.1 The EPA prepares an Assessment Report on the proposed action and forwards it to the Western Australian Environment Minister, who will forward it to the Commonwealth Environment Minister.
- 7.2 The Assessment Report takes into account:
- (a) the PER or the ERMP (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 6 of this Schedule; and
  - (d) any other relevant information available to the EPA.
- 7.3 The Assessment 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.