



Premier of Western Australia

Our Reference: 59-148353

Hon Scott Morrison
Prime Minister
Parliament House
PO Box 6022
CANBERRA ACT 2600

Dear Prime Minister 

APPROVAL BILATERAL AGREEMENT TO SUPPORT MAJOR PROJECT DELIVERY

As part of our continued dialogue about improving the timeliness of major project environmental approvals in Western Australia (WA), I am writing to seek your support to establish, as soon as possible, an approval bilateral agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) between the Commonwealth and Western Australian governments.

Such an agreement would significantly reduce major project timeframes, duplication and costs. It also supports your Government's deregulation agenda, while continuing to deliver high quality environmental regulation. It would be welcomed by project proponents and industry across all sectors.

I am confident that WA's existing environmental assessment frameworks and processes can ensure adequate assessment of matters protected under the EPBC Act and that bilateral approvals would not result in unacceptable or unsustainable impacts on those protected matters. However, additional resources would be required for WA to take on the work that would be transferred from the Commonwealth.

I believe it is important for our Governments to collaborate, develop and implement an approval bilateral agreement with great speed and that this can be done under our respective existing legislation – it does not have to wait for any future legislative changes. Indeed, I note that in 2014 the Commonwealth and WA Environment Ministers released a draft approval bilateral agreement for public consultation, providing the groundwork for us to realise this opportunity as soon as possible.

s22

The WA Government is committed to improving regulation in order to support the state's economy and ensure that our environment is protected. I believe an approval bilateral agreement will make an important contribution to achieving these objectives. I look forward to your earliest response about how we can progress this opportunity.

Yours sincerely



Mark McGowan MLA
PREMIER

22 NOV 2019



PRIME MINISTER

Reference: MC19-080571

17 FEB 2020

The Hon Mark McGowan MLA
Premier of Western Australia
1 Parliament Place
PERTH WA 6005

Dear Premier

Thank you for your letter dated 22 November 2019 regarding improved cooperation and streamlining initiatives under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and equivalent Western Australian legislation.

My view that environmental approval processes need to be streamlined while maintaining strong environmental protection outcomes is well known. I am pleased our governments are working together to reduce approval delays, allow project proponents to submit a single application via an online portal, and draw on a public database of biodiversity studies to reduce project planning costs. I welcome your other streamlining initiatives and the fact our governments are working to renew the bilateral assessment agreement by early 2020.

As you note, the EPBC Act currently contains a statutory framework to support bilateral approval agreements. However, our work in 2014 made clear that a number of critical issues need to be addressed to ensure agreements struck under the current framework are robust, durable and legally certain. These include clarifying referral obligations for proponents, and ensuring minor changes to accredited state processes do not invalidate a bilateral agreement.

Our position is that a small number of minor and technical legislative changes are needed to manage these issues before we could execute bilateral approval agreements. It should be recognised that resulting bilateral agreements could be disallowed by the Senate.

Given your support for bilateral approval agreements I have asked the Minister for the Environment, The Hon Sussan Ley MP, to consider whether a bill addressing these critical issues could be introduced in the middle of this year. Noting we cannot pre-empt the outcome of the current statutory review of the EPBC Act, bipartisan support would be needed to progress any such bill in parallel with the review. This bill would not seek to make any significant change in policy or introduce new concepts into the EPBC Act.

The 2014 draft bilateral agreement provides a basis for us to move quickly, however we would still need to re-accredit any Western Australian approval processes which have since changed to ensure they meet the criteria of the Commonwealth legislation. Minister Ley is

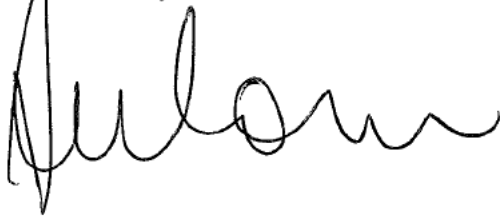
already working with her counterpart in Western Australia to update the bilateral assessment agreement as a matter of priority. Updating the bilateral assessment agreement is a prerequisite to a bilateral approval agreement, and will largely cover off on the necessary reaccreditation work.

s22

In addition to supporting the digital approvals platform, fast-tracking a renewed bilateral assessment agreement and considering essential legislation to enable bilateral approval agreements, I believe there is more we can do together to improve regulatory efficiencies. I would welcome your advice on how quickly it would be possible to conclude the Perth and Peel Regions strategic assessment, which commenced in 2011, given the additional streamlining benefits that would deliver.

s22

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written in a cursive style.

SCOTT MORRISON



**THE HON SUSSAN LEY MP
MINISTER FOR THE ENVIRONMENT
MEMBER FOR FARRER**

Hon Mark McGowan MLA
Premier of Western Australia
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

03 MAR 2020

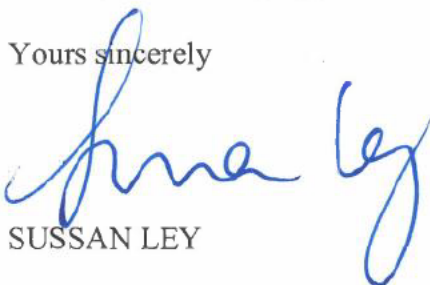
Dear Premier,

I am writing in relation to your letter to the Prime Minister of 22 November 2019, with a proposal to support major project delivery in Western Australia through the establishment of an approval bilateral agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) between the Commonwealth and Western Australian governments.

s22

Thank you for bringing your concerns to my attention.

Yours sincerely



SUSSAN LEY



THE HON SUSSAN LEY MP
Minister for the Environment

THE HON BEN MORTON MP
**Assistant Minister to the Prime Minister
and Cabinet**

PDR: MS20-000433

The Hon Stephen Dawson MLC
Minister for Environment
12th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister Dawson

Stephen

We write to you regarding the Australian Government's commitment to streamline environmental approval processes under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth).

s22

The funding to Western Australia is conditional on a co-contribution from the Western Australian Government and agreement to revitalise bilateral assessment agreements under the EPBC Act. Updating the bilateral assessment agreement is a necessary prerequisite to implementing bilateral approval agreements and a priority of both governments.

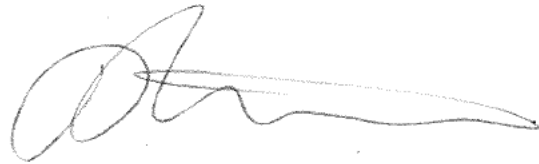
s22

s22

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Susan Ley'.

SUSSAN LEY

A handwritten signature in cursive script, appearing to read 'Ben Morton'.

BEN MORTON



Premier of Western Australia

Our Reference: 59-169366/DC
Your Reference: MC19-080571

Hon Scott Morrison
Prime Minister
Parliament House
PO Box 6022
CANBERRA ACT 2600

Dear Prime Minister 

Thank you for your letter dated 17 February 2020 in relation to environmental assessment and approvals processes, and improved cooperation and streamlining initiatives between the Commonwealth and Western Australian Governments.

Western Australian businesses and peak bodies have welcomed the proposal that we deliver an approvals bilateral agreement between our Governments. They recognise that this marks a significant step forward in efforts to reduce duplication, costs and timeframes for environmental assessments. My advice and the advice of industry is that there is no legal or practical impediment to progressing the finalisation of a bilateral agreements in the immediate term.

Nevertheless, your proposal is a practical one, and I have asked the Western Australian Environment Minister, the Hon Stephen Dawson MLC, to support the Hon Sussan Ley MP to progress the minor amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Cth) through the Senate. s22

s22

I support your suggestion to contain the scope of this process to those specific matters required to enable the execution of a bilateral agreement between us. It is particularly important that this matter does not get caught up in the wider, long term independent review of the EPBC Act.

Your upcoming visit to Perth on 1 April 2020 provides an opportunity for us to jointly announce our intention to secure a bilateral agreement in the manner and timeframe you propose.

I appreciate your proactive approach to this matter and look forward to working with you to streamline the environmental assessment and approvals processes in Western Australia.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark McGowan', with a long horizontal flourish extending to the right.

Mark McGowan MLA
PREMIER

10 MAR 2020



COPY

**Minister for Environment; Disability Services; Electoral Affairs
Deputy Leader of the Legislative Council**

Your Ref PDR. MS20-000433
Our Ref 62-19559

Hon Sussan Ley MP
Minister for the Environment

Hon Ben Morton MP
Assistant Minister to the Prime Minister
and Cabinet

Parliament House
CANBERRA ACT 2600

Sussan & Ben

STREAMLINING ENVIRONMENTAL APPROVAL PROCESSES

Thank you for your correspondence, received in this office on 11 March 2020, regarding the streamlining of environmental approval processes under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). I apologise for the delay in providing this response.

The Western Australian Government is committed to improving the effectiveness of environmental protection and to introduce measures to enhance and streamline environmental regulation. I am pleased to advise that the Department of Water and Environmental Regulation (DWER) is working closely with the Commonwealth Department of Agriculture, Water and the Environment (DAWE) to deliver on the streamlining activities outlined in your letter. The recent activities in this area are summarised below.

Bilateral agreements

s22

There now exists a significant opportunity to progress the approvals bilateral agreement and the assessment bilateral agreement concurrently. The Western Australian Government proposes that the two agreements are progressed together as a single document and released for public consultation in the coming months. This process can happen ahead of the requisite minor amendments required to the EPBC Act. I am happy to discuss any concerns that you may have with this approach.

s22

As you can see from the key activities outlined above, the McGowan Government strongly supports and encourages the streamlining of environmental approval processes and improved coordination between the State and Commonwealth. We look forward to continuing our collaboration with the Commonwealth to progress these important initiatives, and build a more robust, efficient and effective approvals and regulatory regime.

Yours sincerely



Hon Stephen Dawson MLC
MINISTER FOR ENVIRONMENT

30 APR 2020



**THE HON SUSSAN LEY MP
MINISTER FOR THE ENVIRONMENT
MEMBER FOR FARRER**

MC20-006289

The Hon Stephen Dawson MLC
Minister for Environment; Disability Services; Electoral Affairs
12th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

26 MAY 2020

Dear Minister Dawson

Thank you for your letter dated 30 April 2020 regarding streamlining of environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and equivalent West Australian legislation.

The Australian Government remains strongly committed to streamlining environmental assessment and approval processes and is getting on with the job at this critical time for our nation by busting congestion and supporting delivery of job-creating projects in West Australia and right across Australia.

s22

I note your interest in establishing a bilateral approval agreement with the Commonwealth. As the Prime Minister outlined in his letter to Premier McGowan on 17 February 2020, there are a number of critical issues in the EPBC Act that need to be addressed to ensure approval agreements struck under the current framework are robust, durable and legally certain. These amendments include clarifying referral obligations for proponents and ensuring minor changes to accredited state processes do not invalidate a bilateral agreement.

As you are aware, a statutory Review of the EPBC Act is underway, led by Professor Graeme Samuel AC. The Review will be critical in determining the most effective ways to streamline environmental approvals. Our position remains that it is important not to pre-empt the outcome of the EPBC Act Review. This is a once in a decade opportunity and bipartisan support will be key to implementing a balanced and substantive package of reforms. I expect to receive Professor Samuel's interim report by the end of June. As I have said publicly, if there are sensible reform proposals which can be implemented before the final report, I will move to introduce early legislation.

In the meantime, I believe there is more we can do together to deliver genuine improvements in environmental approvals if West Australia commits to act without further delays.

s22

A large rectangular area of the document is redacted with a solid grey fill. The word "s22" is visible at the top left of this redacted area.

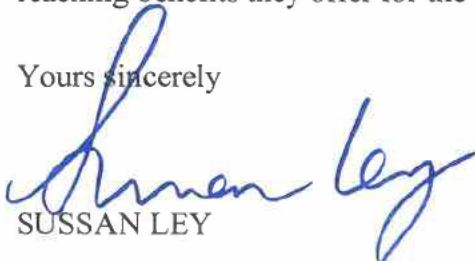
The Prime Minister made clear in his letter to Premier McGowan that updating the bilateral assessment agreement is a prerequisite to implementing any potential approval bilateral agreement and it is a condition for Commonwealth funding for the digital transformation of environmental approvals.

s22

A very large rectangular area of the document is redacted with a solid grey fill. The word "s22" is visible at the top left of this redacted area.

I welcome your interest in streamlining environmental approvals and I look forward to working with you to implement these much-needed reforms, particularly given the significant and far-reaching benefits they offer for the businesses and communities of West Australia.

Yours sincerely

A handwritten signature in blue ink, which appears to read "Susan Ley".

SUSSAN LEY

s47F

From: s47F
Sent: Thursday, 25 June 2020 2:05 PM
To: s47F
Subject: RE: Bilateral Discussion [SEC=OFFICIAL]
Attachments: Indicative Timeframe 25 June 20.docx

Hi s47F

s22

Also I expect if there is any movement with regard to an approvals agreement this may change significantly.

Speak to you soon

s47F

s47F

EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

s47F | www.dwer.wa.gov.au | www.epa.wa.gov.au

From: s47F
Sent: Wednesday, 24 June 2020 7:59 AM
To: s47F
Subject: Accepted: Bilateral Discussion [SEC=OFFICIAL]

Thanks s47F

s22

Cheers

s47F

s47F

A/g Director – Major Projects West Section

Department of Agriculture, Water and the Environment

s47F | GPO BOX 787 Canberra ACT 2600 | Phone s47F

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s47F

Subject: Bilateral Agreement - Planning
Location: Microsoft Teams Meeting

Start: Mon 20/07/2020 1:30 PM
End: Mon 20/07/2020 2:30 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Good Afternoon Greg

As discussed late last week this meeting is to share our understandings with a view to:
-map out the process and timing to deliver an approval bilateral agreement;
-identify the packages of work required to deliver the agreement and its implementation; and
-identify risks and learning from 2014/2015 and how these will be managed.

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If you would like to discuss anything further prior to the meeting please contact me.

Kind Regards

s47F

s47F

Manager Bilateral Agreements
EPA Services

[Department of Water and Environmental Regulation](#)

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

s47F | www.dwer.wa.gov.au | www.epa.wa.gov.au

s47F

Subject: Bilateral Agreement - Planning
Location: Microsoft Teams Meeting

Start: Thu 16/07/2020 3:30 PM
End: Thu 16/07/2020 4:30 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Good Afternoon Greg

As discussed late last week this meeting is to share our understandings with a view to:
-map out the process and timing to deliver an approval bilateral agreement;
-identify the packages of work required to deliver the agreement and its implementation; and
-identify risks and learning from 2014/2015 and how these will be managed.

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If you would like to discuss anything further prior to the meeting please contact me.

Kind Regards

s47F

s47F

Manager Bilateral Agreements
EPA Services

[Department of Water and Environmental Regulation](#)

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

s47F

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s47F

From: Gregory Manning <Gregory.Manning@environment.gov.au>
Sent: Tuesday, 21 July 2020 2:23 PM
To: s47F
Cc: s47F (Agriculture)
Subject: RE: Requirement for Correspondence [SEC=OFFICIAL]

Hi s47F

We have pondered the same question and to that end are in the process of pulling out exchanges over the last few months between our Minister and WA to see if they provide the appropriate request. Might be useful if you pondered same and we can resolve on Friday if we need to organise something.

Greg.

From: s47F
Sent: Monday, 20 July 2020 3:14 PM
To: Gregory Manning <Gregory.Manning@environment.gov.au>
Subject: Requirement for Correspondence

Hi Greg

Could you confirm whether any correspondence is required from the State regarding a willingness to enter into a bilateral agreement that would trigger Minister Ley to issue a Notice of Intent to enter into an Approval Bilateral Agreement with WA.

Thank you

s47F

s47F
Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

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s47F

Subject: Bilateral Agreement Key Milestones and Timeframes
Location: Microsoft Teams Meeting

Start: Fri 24/07/2020 2:30 PM
End: Fri 24/07/2020 3:30 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Hi Greg & s47F

We are seeking as an outcome of this meeting to identify the timeframe for key milestones to enable the approval agreement to be finalised this year.

I note, as discussed on Monday, that there are several interdependencies which support development of the agreement that will need to be progressed in parallel.

I suspect that some aspects may be on critical path, hence the need to identify and commence work on these.

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Kind Regards

s47F

s47F
Manager Bilateral Agreements
EPA Services

[Department of Water and Environmental Regulation](#)

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s47F

Subject: Update Bilateral Agreement
Location: Microsoft Teams Meeting

Start: Tue 4/08/2020 1:30 PM
End: Tue 4/08/2020 2:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Hi Greg

I am on leave on this Friday 31 July and Monday 3 August, I am hoping this time might be suitable for an update on any progress with the approval Bilateral agreement.

Thank you

s47F

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s47F

From: s47F
Sent: Tuesday, 4 August 2020 4:01 PM
To: s47F
Subject: Regular Meeting re bilateral agreement

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon s47F

I would like to schedule a regular 1 hour weekly meeting with Greg Manning and s47F in anticipation of discussions commencing regarding the bilateral approval agreement.

We can cancel them if not required, however it may be easier to set time aside in advance, noting more meetings will be required if negotiations commence.

We propose Mondays or Tuesdays at 11am WST if this time suits.

Please give me a call when you are available to discuss.

s47F

Manager Bilateral Agreements
EPA Services

[Department of Water and Environmental Regulation](#)

8 Davidson Terrace, JOONDALUP WA 6027

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s47F

From: s47F
Sent: Friday, 21 August 2020 1:25 PM
To: s47F
Subject: FW: Notice of Intent - Bilateral Agreement WA [SEC=OFFICIAL]

From: s47F
Sent: Friday, 7 August 2020 12:53 PM
To: Gregory Manning <Gregory.Manning@awe.gov.au>
Cc: s47F
<s47F Tregurtha, James <James.Tregurtha@environment.gov.au>; s47F
s47F
Subject: RE: Notice of Intent - Bilateral Agreement WA [SEC=OFFICIAL]

Hello Greg

Thank you for your email. I see the notice of intent has now been published.

Could you please give me a call as soon as possible so we can discuss next steps.

Thank you

s47F

s47F

Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027
Locked Bag 10, JOONDALUP DC WA 6919

s47F | www.dwer.wa.gov.au | www.epa.wa.gov.au

From: Gregory Manning <Gregory.Manning@awe.gov.au>
Sent: Friday, 7 August 2020 8:26 AM
To: s47F
Cc: s47F
s47F James Tregurtha <James.Tregurtha@environment.gov.au>
Subject: Notice of Intent - Bilateral Agreement WA [SEC=OFFICIAL]

Good morning s47F

As you are probably aware by now, we've been advised that Minister Ley has signed her notice of intention to develop a draft approval bilateral agreement with Western Australia, and is writing to your minister regarding this. We are making arrangements for the notice to be published in the government *Gazette*, a newspaper that circulates in your state/territory, and on our department's website. We expect the notice will be published in the coming days. Look forward to talking to you soon.

Kind regards

Greg

Greg Manning
Assistant Secretary
Bilateral Agreements
Environment Reform Division

Department of Agriculture, Water and the Environment | awe.gov.au

John Gorton Building, King Edward Terrace, Parkes, ACT
PO Box 787, CANBERRA CITY ACT 2601

T: 02 6274 2461 | E: gregory.manning@awe.gov.au

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s47F

From: s47F
Sent: Friday, 21 August 2020 1:24 PM
To: s47F
Subject: FW: Bilateral Agreements and Proposed Amendments to the EPBC Act [SEC=UNCLASSIFIED]

From: s47F
Sent: Friday, 7 August 2020 6:46 PM
To: Manning, Gregory <Gregory.Manning@environment.gov.au>
Cc: s47F
s47F
Subject: Bilateral Agreements and Proposed Amendments to the EPBC Act [SEC=UNCLASSIFIED]

Good Afternoon Greg

In order to assist with progressing both the assessment and approval bilateral agreements with Western Australia, we are seeking some further visibility regarding the proposed amendments to the EPBC Act.

Specifically we are seeking:

- 1) permission for our State Solicitors Office to engage directly with the Australian Government Solicitors regarding the proposed amendments to the EPBC Act; and
- 2) a copy of the draft amendments.

Regards

s47F

s47F
Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027
Locked Bag 10, JOONDALUP DC WA 6919

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s47F

Subject: WA Approval Bilateral Agreement Mtg 1
Location: Microsoft Teams Meeting

Start: Wed 12/08/2020 3:00 PM
End: Wed 12/08/2020 6:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Good Evening All

The purpose of this meeting is to work through each clause of the 2014 draft Approval Bilateral Agreement to identify where changes are required.

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s47F

Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

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s47F

From: Gregory Manning <Gregory.Manning@environment.gov.au>
Sent: Tuesday, 11 August 2020 9:20 PM
To: s47F
Cc: s47F
Subject: RE: Approval Bilateral Agreement Timeline [SEC=OFFICIAL]

Hi s47F

Thanks for the updated timeline based on our conversation last night.

Broadly we are in agreement, but we have clarified some timeframes and steps as we understand them from our perspective. These are reflected in the updated table immediately below. The dates are indicative and reflect our best understanding on how to work through this with you. I would like to suggest we should use this to guide our work, updating it as required as we go and as any further information comes to hand in relation to the detail of the particular steps. We are of course happy to discuss.

A few things to note:

1. Your timeline suggests in-principle agreement to the bilateral by 5 October with final sign off mid December. We will consider this further and come back to you but for now the table below indicates signed agreement by 5 October. In any case the majority of the work would still need to be done in order to achieve even 'in-principle agreement'.
2. We think at this stage that public consultation could occur in parallel with tabling of the WA processes (ie public consultation would commence and tabling would occur on 3 September). Public consultation would however need to be concluded and the agreement made or agreed in-principle by day one of disallowance starting on 6 October.
3. We would agree the 15 day period is not inclusive of the day it is tabled.
4. We are still considering the best way to approach the assessment bilateral agreement, but will endeavour to have an proposed way forward on this before our discussion tomorrow.

I hope this is helpful and look forward to talking tomorrow.

Greg.

	Date	Critical Steps*
1.	7 August	S45(3) Cth Minister publish intent to enter bilateral agreement
2.	10 August	Commence formal negotiations on Draft Agreement
3.	11-14 August	Commonwealth updates 2014 accreditation standards to address interim environmental standards
4.	12-20 August	Commonwealth benchmarking of state process
5.	25 August (approx.)	Finalise negotiations on draft agreement
6.	2 September (no later)	Ministers agree to progress to public consultation
7.	3 September- 30 September	S49A Commonwealth public consultation draft agreement (min 28 days) Includes public holiday (WA) 28 th Sept
8.	1 October – 4 October	Review public comments and (if required) amend bilateral agreement.
9.	5 October	S45(1) Approval bilateral agreement signed by both Ministers and S45(4) Commonwealth Minister publish agreement, statement of reasons & report on public comments
10.	6 October – 10 December 2020	S46(4) – (6) Disallowance process 15 days before each house of Parliament (Requires tabling 3 September)

11.	11 December or after	S46(3) Cth Minister accredits a management arrangement or authorisation process (assuming no disallowance)
12.	TBD	Approval Bilateral Agreement comes into effect

Assumptions

1.	11-20 August	EP Amendment Bill 2020 passed both houses of WA Parliament unamended
2.	24 August – 2 Sept	Amendments to EPBC Act introduced and Royal Assent

From: s47F

Sent: Monday, 10 August 2020 8:21 PM

To: Gregory Manning <Gregory.Manning@environment.gov.au>

Cc: s47F

s47F

Subject: Approval Bilateral Agreement Timeline

Good Evening Greg, s47F

As discussed it would be appreciated if you could confirm the proposed timeline below for the approval bilateral agreement.

In particular it would be appreciated if you could confirm your position regarding timing of signing of the agreement (9 & 11 below). The current approach is based on the following:

EPBC Act s46.

Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament a copy of:

(b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

that the Minister is considering accrediting for the purposes of subsection (2) or (2A).

Limitations on accreditation during period for disallowance

(5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:

(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament; or

	Date	Critical Steps*
1.	7 August	S45(3) Cth Minister publish intent to enter bilateral agreement
2.	10 August	Commence formal negotiations on Draft Agreement
3.	11-20 August	EP Amd Bill 2020 passed both houses
4.	24-31 August	Cth Benchmarking of State Process
4.	24 August – 2 Sept	Amendments to EPBC Act introduced and Royal assent
5.	25 August	Finalise negotiations on Draft Agreement
6.	3 September	Interim National Standards endorsed by Cth and in law
7.	3 September- 30 September	S49A Cth Public Consultation draft agreement (min 28 days) Additional day to allow for Public holiday 28 th Sept
8.	30 September – 2 October	Review Public Comments and (if required) amend bilateral agreement
9.	5 October	In principle Agreement by both Ministers
10.	Tabled 3 September Disallowance 6 October – 10 December 2020	S46(4) – (6) Disallowance process 15 days before each house of Parliament

11.	Mid December	New Bilateral Agreement signed by both Ministers
12.	Late December	S45(4) Cth Minister publish agreement, statement of reasons & report on public comments
13.	TBD	Approval Bilateral Agreement comes into effect

Assumptions

The assessment agreement will be progressed in parallel.

7 & 10. Public consultation and Tabling of the States "Authorisation Process" need to occur sequentially as the Agreement itself will form part of the accredited "authorisation process" to be tabled in Federal Parliament.

9. The 15 day period is not inclusive of the day it is tabled, therefore it would need to commence on 3 September.

It would be appreciated if you could confirm this by 12pm AEST Tuesday 11 August.

Kind Regards

s47F

s47F

Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

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s47F

From: s47F
Sent: Friday, 21 August 2020 1:21 PM
To: s47F
Subject: FW: Approval Bilateral Agreement Timeline [SEC=OFFICIAL]

From: s47F
Sent: Tuesday, 11 August 2020 2:22 PM
To: s47F Manning, Gregory <Gregory.Manning@environment.gov.au>
Cc: s47F
s47F
Subject: RE: Approval Bilateral Agreement Timeline [SEC=OFFICIAL]

Hi s47F

Apologies we are still working through the timeline.

Our IT systems have failed us today and Greg isn't back online yet. We are working to get you a response asap.

Regards,
s47F

Anna-Liisa Lahtinen | Director | Bilateral Agreements Branch | EPRD
s47F

From: s47F
Sent: Tuesday, 11 August 2020 2:19 PM
To: Gregory Manning <Gregory.Manning@environment.gov.au>
Cc: s47F
s47F
Subject: RE: Approval Bilateral Agreement Timeline

Hi Greg & Team

I am just following up on my below email. Are you able to provide confirmation of the below timeline.

Thank you

s47F

From: s47F
Sent: Monday, 10 August 2020 6:21 PM
To: Gregory.Manning@environment.gov.au
Cc: s47F
s47F
Subject: Approval Bilateral Agreement Timeline

Good Evening Greg, s47F

As discussed it would be appreciated if you could confirm the proposed timeline below for the approval bilateral agreement.

In particular it would be appreciated if you could confirm your position regarding timing of signing of the agreement (9 & 11 below). The current approach is based on the following:

EPBC Act s46.

Tabling of management arrangement or authorisation process before accreditation

(4) The Minister must cause to be laid before each House of the Parliament a copy of:

(b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;

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Limitations on accreditation during period for disallowance

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(a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament; or

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It would be appreciated if you could confirm this by 12pm AEST Tuesday 11 August.

Kind Regards

s47F

s47F

Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

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s47F

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s47F

From: Gregory Manning <Gregory.Manning@environment.gov.au>
Sent: Wednesday, 12 August 2020 9:53 PM
To: s47F
Cc: s47F
Subject: RE: Contact details for s47F [SEC=OFFICIAL]

Have copied s47F in here so you have his email address.

Greg.

From: s47F
Sent: Wednesday, 12 August 2020 7:13 PM
To: Gregory Manning <Gregory.Manning@environment.gov.au>; s47F
s47F
Subject: Contact details for s47F

Hello All

Is it possible to send through s47F details so that SSO can engage regarding the EPBC Act Amendments.

Thank you

s47F
Manager Bilateral Agreements
EPA Services

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027
Locked Bag 10, JOONDALUP DC WA 6919

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s47F

From: Gregory Manning <Gregory.Manning@environment.gov.au>
Sent: Thursday, 13 August 2020 2:14 PM
To: s47F
Cc: s47F
Subject: Advice on Authorisation processes [SEC=OFFICIAL]

Hi s47F

Thanks for your phone call. Given the request to delay today's discussions could we please seek confirmation on exactly which processes under the EP Act WA is looking to put forward for accreditation. This will enable us to continue the benchmarking exercises that are necessary to inform our negotiations on the draft agreement. Specifically we are looking for what WA would be setting out in Schedule 1 clause 3, 'Authorization processes'. For example, legislation, regulation and or policy...

We will be conducting that benchmarking against the 2014 Accreditation Standards and in light of the proposed interim environmental standards.

Thanks and look forward to talking to you again tomorrow.

Greg.

s47F

From: s47F
Sent: Friday, 21 August 2020 1:19 PM
To: s47F
Subject: FW: Without Prejudice: Draft Administrative Arrangements [SEC=UNCLASSIFIED]
Attachments: WA Administrative Arrangements - DRAFT - Approval Bilateral_WA_March15.docx

From: s47F
Sent: Thursday, 13 August 2020 4:34 PM
To: s47F
Cc: Manning, Gregory <Gregory.Manning@environment.gov.au>; s47F
s47F
Subject: Without Prejudice: Draft Administrative Arrangements [SEC=UNCLASSIFIED]

Hi s47F

Sorry for the delay getting this to you.

Please find attached the most recent version of the administrative arrangements that we could find on file from the one-stop shop negotiations.

Kind regards

s47F
Assistant Director
Environment Protection and Reform Division

s47F

From: s47F
Sent: Thursday, 13 August 2020 2:39 PM
To: s47F
Cc: Manning, Gregory <Gregory.Manning@environment.gov.au>; s47F
s47F
Subject: Administrative Arrangements [SEC=UNCLASSIFIED]

Hi s47F

I understand from our meeting on Monday 11 August that you were going to send through a word version of where the State and Commonwealth got to with the Administrative/Transitional Arrangements on the 2014 Bilateral Agreement.

Have you been able to locate these, and if so can you send them through.

Thank you

s47F
Manager Bilateral Agreements

Department of Water and Environmental Regulation

8 Davidson Terrace, JOONDALUP WA 6027

Locked Bag 10, JOONDALUP DC WA 6919

s47F

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s47F

From: s47F
Sent: Thursday, 13 August 2020 10:17 AM
To: s47F
Cc: Gregory Manning; s47F
Subject: Outcomes of meeting 1 12 August 2020 [SEC=OFFICIAL:Sensitive]
Attachments: Draft approval bilateral agreement - meeting 200812 docx.docx

Hi s47F

Thanks for your time yesterday to start stepping through the draft approval bilateral agreement from 2014.

As discussed, please find attached a without prejudice version of the 2014 Draft agreement annotated with the outcomes yesterday's meeting. Please let us know if this aligns with your understanding on where we landed yesterday.

There are a few things we discussed that I want to highlight:

- We require your feedback on Schedule 1 as soon as possible in order to undertake benchmarking.
- The implication of the new standards on the existing clauses (e.g. offsets) will require further consideration. We encourage you to review the draft agreement alongside the prototype standards to begin to identify potential issues
- The draft agreement will need modification to incorporate the new standards, and potentially fill any gaps identified through benchmarking of authorisation processes. We are working on this, however the timeframe requires this to happen alongside negotiation of the agreement.

This afternoon we will continue from where we finished yesterday (clause 7).

Please let me know if there is anything you would like to discuss in advance of our meeting at 12/2pm.

Regards,
s47F

| Director | Bilateral Agreements Branch | EPRD
s47F

WITHOUT PREJUDICE

DRAFT APPROVAL BILATERAL AGREEMENT

MADE UNDER SECTIONS 45 AND 46
OF THE *ENVIRONMENT PROTECTION
AND BIODIVERSITY CONSERVATION
ACT 1999* (CTH)

Commonwealth of Australia
(Commonwealth)

and

The State of Western Australia
(WA)

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Details

s47C, s47E(d)

Parties

The parties to this Agreement are:

1. the Minister for the Environment for and on behalf of the Commonwealth of Australia (**Commonwealth**); and
2. the Minister for Environment for and on behalf of the State of Western Australia.

Background

- A. Under the Intergovernmental Agreement on the Environment 1992 and the Council of Australian Governments Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment 1997, the parties committed to working together across their shared responsibilities to protect and conserve Australia's environment.
- B. Both the Commonwealth and WA are committed to strengthen intergovernmental cooperation on the environment and to minimise costs to business while maintaining high environmental standards.

s47C, s47E(d)

Objects

- C. Under the Memorandum of Understanding dated 19 December 2013, the Commonwealth and WA committed to the establishment of a 'one-stop-shop' for environmental approvals under the EPBC Act, removing duplication of assessment and approval processes while maintaining high environmental standards.
- D. This Agreement facilitates the establishment of a 'one-stop shop' for environmental approvals by:
 - a. identifying the Western Australian authorisation processes that may be accredited by the Commonwealth Minister under section 46 of the EPBC Act; and
 - b. declaring that the actions in the class of actions specified in Schedule 1 do not require approval under Part 9 of the EPBC Act for the purposes of the provisions of Part 3 of the EPBC Act specified in Schedule 1.
- E. This Agreement aims to:
 - a. ensure Australia complies fully with its international environmental obligations;
 - b. ensure matters of national environmental significance are protected as required under the EPBC Act;
 - c. promote the conservation and ecologically sustainable use of natural resources;
 - d. ensure an efficient, timely and effective process for environmental assessment and approval of controlled actions; and
 - e. minimise duplication in the environmental assessment and approval processes of the Commonwealth and WA.

s47C, s47E(d)

s47C, s47E(d)

DRAFT: WITHOUT PREJUDICE

- F. The parties agree to utilise WA processes and policies to achieve the above, to the greatest extent possible.
- G. The parties will use their best endeavours to undertake the commitments in this Agreement acting in a spirit of cooperation and consultation to achieve an efficient, timely and effective process for environmental assessment and approval.

s47C, s47E(d)

DRAFT

Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the same meaning as in the EPBC Act and otherwise the following definitions are used:

Accredited Process	a bilaterally accredited authorisation process accredited for the purpose of the EPBC Act and this Agreement by the Commonwealth Minister.
Administrative Arrangements	administrative arrangements made under clause 9.1 of this Agreement.
Agreement	this bilateral agreement made under section 45 of the EPBC Act between the Commonwealth and WA, as amended from time to time, and includes its Schedules.
Assessment Bilateral Agreement	the bilateral agreement dated 3 October 2014 between the Commonwealth and WA relating to environmental impact assessment.
Assessment Report	an assessment report required to be prepared by the EPA or the CEO as relevant and, for the purpose of the Agreement, may include Information accompanying that report.
CEO	the Chief Executive Officer of the WA Agency that administers Part V, Division 2 of the EP Act, and where relevant, includes a delegate of the CEO.
Commencement Date	90 days after the date that an authorisation processes in Schedule 1 of the Agreement is accredited under section 46(3) of the EPBC Act.
Commonwealth Minister	the Minister administering the EPBC Act and, where relevant, includes a delegate of the Minister or a person authorised by the Minister for the purposes of this Agreement.
Department	the Commonwealth Department of the Environment, or any other Commonwealth agency that administers this Agreement from time to time.
EP Act	<i>Environmental Protection Act 1986</i> (WA)
EPA	the Environmental Protection Authority continued in existence by section 7(1) of the EP Act.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
Information	includes data.

s47C, s47E(d)

s47C, s47E(d)

DRAFT: WITHOUT PREJUDICE

Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity, as applicable from time to time.
Matter of NES	a matter of national environmental significance protected by a provision of Part 3 of the EPBC Act specified in Item 2 of Schedule 1.
Relevant impact	a relevant impact as defined in section 82 of the EPBC Act.
Schedule	a schedule to this Agreement.
Senior Officers' Committee	the committee established under clause 9.2.
Serious Environmental Harm	<p>environmental harm that:</p> <p>(a) is irreversible, of a high impact or on a wide scale; or</p> <p>(b) is significant or in an area of high conservation value or special significance,</p> <p>where:</p> <p>'environmental harm' means direct or indirect:</p> <p>(c) harm to the environment involving removal or destruction of, or damage to –</p> <p>(i) native vegetation; or</p> <p>(ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals; or</p> <p>(d) alteration of the environment to its detriment or degradation or potential detriment or degradation; or</p> <p>(e) alteration of the environment to the detriment or potential detriment of an environmental value</p> <p>and 'environmental value' means –</p> <p>(f) a beneficial use; or</p> <p>(g) an ecosystem health condition</p> <p>and 'beneficial use' means a use of the environment, or of any portion thereof, which is</p> <p>(h) conducive to public benefit, public amenity, public safety, public health or aesthetic enjoyment and which requires protection from the effects of emissions or of activities referred to in paragraph (c) or (d) of the above definition of 'environmental harm'; or</p>

s47C, s47E(d)

DRAFT: WITHOUT PREJUDICE

(i) identified and declared under section 35(2) of the EP Act to be a beneficial use to be protected under a policy approved under section 31(d) of the EP Act;

and an 'ecosystem health condition' means a condition of the ecosystem which is:

(j) relevant to the maintenance of ecological structure, ecological function or ecological process and which requires protection from the effects of emissions or of activities referred to in paragraphs (c) or (d) of the above definition of 'environmental harm'; or

(k) identified and declared under section 35(2) of the EP Act to be an ecosystem health condition to be protected under a policy approved under section 31(d) of the EP Act.

WA the State of Western Australia.

WA Minister the WA Minister administering the EP Act and includes, where relevant a delegate of the Minister.

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- (d) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement;
- (e) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (f) notes and headings are for convenient explanation or reference only and do not form part of this Agreement or affect the meaning of the provisions to which they relate.

1.3 Priority of Agreement documents

- (a) If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
 - (i) Schedule 1 to this Agreement;
 - (ii) the details and operative provisions of this Agreement;
 - (iii) Schedules 2 and 3 in their order of appearance.

DRAFT: WITHOUT PREJUDICE

- (b) Administrative Arrangements will be read subject to this Agreement.

1.4 Relationship to assessment bilateral agreement

Where an action does not fall within the scope of this Agreement, the Assessment Bilateral Agreement, which operates concurrently with this Agreement, may apply.

s47C, s47E(d)

2. Nature of this Agreement

- (a) This Agreement is a bilateral agreement for the purposes of section 45 of the EPBC Act.
- (b) This agreement does not create contractual or other legal obligations between the parties, and a breach of this Agreement will not give rise to any cause of action, or right to take legal proceedings, other than as provided for in the EPBC Act.

3. Agreement Period

This Agreement commences on the Commencement Date and expires on the day after the tenth anniversary of the Commencement Date, unless the Agreement is suspended or cancelled earlier in accordance with the EPBC Act.

Note: Section 65(2) of the EPBC Act requires the Commonwealth Minister to cause a review of the operation of this Agreement to be carried out at least once every five years while this Agreement remains in effect.

s47C, s47E(d)

4. Effect of this Agreement

4.1 Declaration

Subject to clauses 4.2 and 4.3, it is declared that, for the purposes of the provisions of Part 3 of the EPBC Act which are specified in Item 2 of Schedule 1 of this Agreement, an action does not require approval under Part 9 of the EPBC Act if the action is in the class of actions specified in Item 4 of Schedule 1 of this Agreement.

4.2 Scope

- (a) The declaration in clause 4.1 applies to an action which occurs within WA.
- (b) Where an action within WA forms part of a larger action that does not occur wholly in WA, WA will consult and use its best endeavours to coordinate its assessment and approval processes with other relevant jurisdictions.
- (c) Consistent with section 49 of the EPBC Act, the declaration in clause 4.1 does not have effect in relation to:
- (i) an action in a Commonwealth area;
 - (ii) where an action is not wholly within a Commonwealth area – that part of the action that is in a Commonwealth area; or
 - (iii) an action taken by the Commonwealth or a Commonwealth agency unless expressly provided for in the class of actions specified in Item 4 of Schedule 1 to this Agreement.
- (d) The declaration in clause 4.1 does not apply to an action if:
- (i) the taking of that action was approved, was taken to have been approved, or was refused under Part 9 of the EPBC Act, or determined to be clearly unacceptable under Division 1A of Part 7; and

s47C, s47E(d)

DRAFT: WITHOUT PREJUDICE

Note: Section 146D of the EPBC Act provides that an approval under section 146B of the EPBC Act is taken to be an approval under Part 9 of the EPBC Act.

- (ii) that approval, refusal or determination of an action as clearly unacceptable remains in force.

Note: clause 4.2(d) does not affect modification of an action that is approved in accordance with an accredited process where that modification is a new action that is not substantially the same as the previously approved action.

- (e) To avoid doubt, the declaration in clause 4.1 does not apply to an action that is substantially the same as an action the taking of which was refused, or determined to be clearly unacceptable, under the EPBC Act before the Commencement Date, as referred to in clause 4.2(d).

4.3 Transition

The declaration in clause 4.1 does not apply to the following actions:

- (a) an action which, before the Commencement Date, was referred under Part 7 of the EPBC Act to the Commonwealth Minister, unless the referral of the action has been, or is, withdrawn under section 170C of the EPBC Act, or has lapsed, or lapses, under section 155 of the EPBC Act; or
- (b) an action where, before the Commencement Date:
 - (i) under the Accredited Process defined in Item 3(a)(i) of Schedule 1 (Assessment on Proponent Information (API)), the EPA has issued an API scoping guideline in accordance with section 10.1.2 of the WA Administrative Procedures;
 - (ii) under the Accredited Process defined in Item 3(a)(ii) of Schedule 1 (Public Environmental Review), the EPA or the proponent has completed an environmental scoping document in accordance with section 10.2.2 of the WA Administrative Procedures; or
 - (iii) under the Accredited Process defined in Item 3(c) of Schedule 1 (native vegetation clearing processes), a valid application has been advertised under section 51E of the EP Act;unless the action was or is being assessed:
 - (iv) under the specified manner set out in Item 3 of Schedule 1 of the Assessment Bilateral Agreement (native vegetation clearing processes), unless the CEO has finalised the assessment report as specified in Item 3.4 of Schedule 1 of the Assessment Bilateral Agreement;
 - (v) under the specified manner set out in Item 4 of Schedule 1 of the Assessment Bilateral Agreement (Assessment on Proponent Information), unless the EPA has given its assessment report prepared under section 44 of the EP Act to the WA Minister; or
 - (vi) under the specified manner set out in Item 5 of Schedule 1 of the Assessment Bilateral Agreement (Public Environmental Review), unless the EPA has given its assessment report prepared under section 44 of the EP Act to the WA Minister.

4.4 Actions to be dealt with for the purposes of this Agreement

If arrangements are in place for a proponent or applicant to elect to have assessment and approval activities conducted by WA pursuant to this Agreement:

s47C, s47E(d)

DRAFT: WITHOUT PREJUDICE

- (a) WA will not assess or approve an action subject to, or for the purposes of this Agreement unless the proponent or applicant has applied in an approved manner for assessment and approval of the action as an action to which the declaration in clause 4.1 may apply.
- (b) A reference in this Agreement to assessment, approval or authorisation of an action in accordance with, or under, an Accredited Process means assessment, approval or authorisation of an action that has in fact been made subject to, or for the purposes of this Agreement in accordance with an Accredited Process.
- (c) The parties will put arrangements in place to ensure this Agreement applies to the maximum extent possible.

s47C, s47E(d)

5. Assessment

5.1 Identification of impacts on Matters of NES

If an action is to be assessed under an Accredited Process, WA will:

- (a) notify the proponent or applicant of the action that there will be no requirement for an approval of the action under Part 9 of the EPBC Act if approved under an Accredited Process;
- (b) require the proponent or applicant of the action to identify the likely impacts on each Matter of NES; and
- (c) if an action is not to be assessed under an Accredited Process, WA will notify the proponent or applicant of the action of their obligation under the EPBC Act to refer an action which is likely to have a significant impact on a Matter of NES to the Commonwealth.

Note 1: The notification under clauses 5.1 may be undertaken in accordance with standard guidelines, which outline the obligation of proponents or applicants to consider the application of the EPBC Act where an action is likely to have a significant impact on a Matter of NES, and to obtain an approval under an Accredited Process or, if such a process is not likely to or will not apply, to refer the proposal or application for a decision under section 75 of the EPBC Act.

Note 2: The requirement to identify impacts on Matters of NES in an application referred to in clause 5.1 may be included in guidelines or standard templates for applications.

s47C, s47E(d)

5.2 Undertaking to assess impacts on Matters of NES

- (a) WA undertakes to ensure that there will be an adequate assessment of the impacts that actions that may be approved in accordance with an Accredited Process:
 - (i) have or will have; or
 - (ii) are likely to have,on each Matter of NES.

s47C, s47E(d)

Note: 'Impacts' include direct, indirect and cumulative impacts.

5.3 General approach to assessment

Where a proposed action may be approved in accordance with an Accredited Process

- (a) WA will, in determining the assessment requirements for the proposed action, ensure there is sufficient information on the relevant impacts of the proposed action to allow the decision-maker to make an informed decision whether or

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not to approve the proposed action and, if so, under what conditions. The extent of the assessment will be proportionate to the level of likely environmental risk; and

Note: In deciding the assessment requirements for the proposed action and the level of likely environmental risk, the relevant decision maker may consider whether the proponent or applicant of the proposed action is a suitable person to be granted an approval, including having regard to the person's history in relation to environmental matters.

- (b) WA will ensure that:
- (i) all relevant impacts of the action on Matters of NES are identified separately in the assessment process. This means that impacts must be explicitly assessed for each Matter of NES that is likely to be significantly impacted by the action;
 - (ii) in relation to listed threatened species, listed threatened ecological communities and listed migratory species – impacts are assessed with regard to the full extent of those matters' range; and
Note: For example, clause 5.3(b)(ii) would require an assessment of impacts with regard to the national extent of a listed threatened species' habitat.
 - (iii) significant Information and opinion on which the assessment is based is included or identified in the Assessment Report.

s47C, s47E(d)

5.4 Seeking expert advice

WA may seek advice from other expert advisory bodies established under the EPBC Act or from the Department, through the Senior Officers' Committee, with details to be set out in the Administrative Arrangements.

s47C, s47E(d)

5.5 Statutory undertaking

- (a) Where an action:
- (i) is taken or proposed to be taken in WA; and
 - (ii) is to be assessed under an Accredited Process; and
 - (iii) is:
 - (A) taken or proposed to be taken by a constitutional corporation; or
 - (B) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between the State and a Territory, or between two Territories; or
 - (C) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries,

WA undertakes to ensure that the impacts that the action has, will have, or is likely to have on a thing which is not a matter protected by a provision of Part 3 of the EPBC Act, are assessed to the greatest extent practicable.

- (b) The parties agree that an impact is assessed 'to the greatest extent practicable' under clause 5.5(a) if it has been assessed in accordance with applicable WA Laws in which the Accredited Process is set out.

s47C, s47E(d)

6. Decisions on approval

6.1 Offsets

- (a) WA will apply the 'avoid, mitigate, offset' hierarchy as described in the WA Government Environmental Offsets Policy and Guidelines to the assessment and approval of a proposed action under an Accredited Process.
- Note: For the purposes of this clause, mitigation includes minimisation and rehabilitation of the impacted site, where the rehabilitation will contribute to reducing the residual significant impact on Matters of NES.*
- (b) WA will avoid any unacceptable or unsustainable impacts on Matters of NES by requiring any significant residual impacts on Matters of NES to be offset in accordance with the WA Government Environmental Offsets Policy and Guidelines.
- (c) Following the WA Government Environmental Offsets Policy and Guidelines, WA will apply the following principles to offsetting significant residual impacts on Matters of NES:
- (i) offsets will be designed to counterbalance the impact on the Matter of NES being impacted and the associated attributes that may be lost or at risk;
 - (ii) offsets will be cost-effective, efficient, transparent and reasonable;
 - (iii) offsets will be based on scientifically robust environmental information and knowledge;
 - (iv) offsets will be in proportion to the level of statutory protection that applies to the Matter of NES;
 - (v) offsets will be of a size and scale proportionate to the significant residual impacts on the Matter of NES;
 - (vi) offsets will effectively account for and manage the risks of the offset not succeeding;
 - (vii) offsets will be additional to any pre-existing requirements, whether determined by law or planning regulations, or agreed to under other schemes or programs;
 - (viii) offsets will be implemented to minimise the time between commencement of the offset and the impact arising from the action;
 - (ix) offsets will compensate for the full duration of the impact;
 - (x) offsets will have transparent governance arrangements including being able to be readily measured, monitored, audited and enforced;
 - (xi) offsets will contribute to longer term strategic outcomes;
 - (xii) offsets will be focussed on maintaining or improving the viability of the Matter of NES impacted; and
 - (xiii) offsets will be applied within a framework of adaptive management.
- (d) For impacts on EPBC Act listed threatened species or ecological communities, WA will have regard to the Commonwealth offsets assessment guide as a reference point for determining whether the proposed offset is in accordance with the requirements of clause 6.1(b) and (c).

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- (e) WA will publish how offset proposals, including for Matters of NES, are derived and justified, including details of assumptions made and data sources relied on.
- (f) If the relevant decision-maker is considering setting an offset condition that:
 - (i) is not consistent with the outcome indicated by the Commonwealth offsets assessment guide; or
 - (ii) comprises less than 90% direct offsets;and the decision-maker intends to approve the action, WA will inform the Commonwealth before making the decision, and provide the information provided by the proponent or applicant and any additional relevant information or proposal being considered by the State.

Note: A direct offset may include:

 - Improving existing habitat for the matter of NES;
 - Creating new habitat for the matter of NES;
 - Reducing threats to the matter of NES;
 - Increasing the values of the matter of NES; and/or
 - Averting the loss of the matter of NES or its habitat that is under threat.
- (g) WA will publish information on the nature and location of offsets imposed, including, where appropriate, on the WA Environmental Offsets Register.
- (h) WA will consult the Commonwealth and stakeholders in further developing and refining the WA Environmental Offsets Guidelines, including development of quantitative metrics for determining offsets.
- (i) The transitional review of this Agreement referred to in clause 12.2 will include a review of operation of the agreement in meeting the objectives of clause 6.1.

6.2 Approvals not inconsistent with plans, etc

To ensure that actions approved in accordance with an Accredited Process will not have unacceptable or unsustainable impacts on Matters of NES, the parties agree that, in deciding whether or not to approve the relevant actions, and if so, under what conditions, the relevant decision-maker will apply the escalation procedures as provided for by clause 10 before making any decision inconsistent with:

- (a) for the world heritage values of a declared World Heritage property:
 - (i) Australia's obligations under the World Heritage Convention;
 - (ii) the Australian World Heritage management principles; or
 - (iii) a management plan that has been prepared for the property under section 316 of the EPBC Act or as described in section 321 of the EPBC Act;
- (b) for the National Heritage values of a National Heritage place:
 - (i) a management plan that has been prepared for the place under section 324S of the EPBC Act or as described in section 324X of the EPBC Act;
 - (ii) the National Heritage management principles; or
 - (iii) an agreement to which the Commonwealth is a party in relation to a National Heritage place;
- (c) for the ecological character of a declared Ramsar wetland:
 - (i) Australia's obligations under the Ramsar Convention;

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- (ii) the Australian Ramsar management principles; or
- (iii) a management plan that has been prepared for the wetland as described in section 333 of the EPBC Act;
- (d) for a listed threatened species or ecological community:
 - (i) Australia's obligations under:
 - (A) the Biodiversity Convention;
 - (B) the Apia Convention; and
 - (C) CITES; or
 - (ii) a relevant recovery plan or threat abatement plan; and
- (e) for a listed migratory species:
 - (i) Australia's obligations under:
 - (A) the Bonn Convention;
 - (B) CAMBA;
 - (C) JAMBA;
 - (D) ROKAMBA; or
 - (E) an international agreement approved under section 209(4) of the EPBC Act.

as in force from time to time.

6.3 Consideration of policies and guidelines

To avoid unacceptable or unsustainable impacts on any Matter of NES of an action approved in accordance with an Accredited Process, WA decision makers will consider such of the following as are relevant to an action when deciding whether to approve an action and, if so, on what conditions:

- (a) any relevant bioregional plan;
- (b) any Information on the relevant impacts of actions in the final terms of reference for a strategic assessment or any published draft strategic assessment report or final strategic assessment report given to the Commonwealth Minister under an agreement under Part 10 of the EPBC Act;
- (c) WA will take into account other relevant policies, advice (including approved conservation advice) or guidelines relating to relevant Matters of NES, published from time to time by the Commonwealth and listed in the Administrative Arrangements or an equivalent WA policy or guidance listed in the Administrative Arrangements.

Note: WA will ensure that, in accordance with their standard practice, the plans and other material referred to in this clause that are relied on to a significant extent in an assessment of a Matter of NES are identified in relevant Assessment Reports.

6.4 Consultation on relevant policies and guidelines

- (a) Where the Commonwealth is developing or amending a guideline, policy or plan to which clause 6.3 may apply, it will notify WA as early as possible and consult WA prior to finalisation.
- (b) Where the Commonwealth has finalised a new or amended guideline, policy or plan to which clause 6.3 may apply, it will notify WA.

s47C, s47E(d)

6.5 Approvals based on principles of environmental policy

The parties agree that when deciding whether to approve an action in accordance with an Accredited Process and, if so, under what conditions, relevant decision-makers will have regard to the object and principles set out in section 4A of the EP Act.

6.6 Approval conditions

If:

- (a) a proposed action has been assessed under an Accredited Process; and
- (b) the action is approved in accordance with an Accredited Process,

the approval for the action must explicitly identify those conditions (if any) which relate to Matters of NES.

Note: State matters and Matters of NES could be addressed in a single condition, as long as the condition is identified explicitly as relating to a Matter of NES.

7. Transparency and access to Information

7.1 Indigenous peoples

- (a) Assessments will recognise the role and interests of Indigenous peoples, as applicable, in promoting conservation and ecologically sustainable use of natural resources and promote the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.
- (b) In particular, WA will require that the proponent or applicant take all reasonable steps to obtain the views of directly affected Indigenous peoples in relation to any action under assessment that is likely to have a significant impact on any Matter of NES specifically related to indigenous heritage value (which may include impacts on biodiversity) as defined in the EPBC Act or that will occur on or affect land or waters that may be subject to a registered native title claim or determination.
- (c) In recognising that the views of relevant Indigenous people are likely to be a primary source of Information on cultural heritage, WA will have due regard to relevant guidelines that address consultation with Indigenous peoples including, but not limited to, WA's 'Aboriginal Heritage Due Diligence Guidelines' and guidance issued by the EPA or the CEO (as relevant) regarding the assessment of Aboriginal heritage, as amended from time to time.

7.2 Public access to documentation

- (a) WA will:
 - (i) publish information relating to the proposed actions on the Internet, including the following, where relevant:
 - (A) referral documentation (however described);
 - (B) final guidelines or terms of reference for assessment;
 - (C) final environmental impact assessment documentation; and
 - (D) public comments, or a summary of public comments, on any of the above;
 - (ii) publish the primary material provided to decision-makers to assist decision-makers to exercise their functions or powers under an

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Accredited Process on the Internet, before that Information is used by the decision-maker; and

Note: For example: Information providing rules, guidelines, practices or precedents relating to assessment and approval decisions.

- (iii) in relation to actions that fall within the class of actions specified in Item 4 of Schedule 1, publish all the approval decisions for those actions on the Internet as soon as practicable after the approval decisions are made.
- (b) Clause 7.2(a) will not be taken to have been breached where the publication of the Information is prohibited under WA Law, where the publication of the Information would reasonably be anticipated to give rise to any legal or equitable claim or liability or is otherwise not published, or published in a particular manner, because the Information is:
 - (i) confidential in nature;
 - (ii) the personal Information of an individual;
 - (iii) likely to be considered sensitive by an Indigenous group (including a kinship group), including in relation to any of the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group; or
 - (iv) environmentally sensitive Information which, if published or published in a particular manner, may increase a risk of damage to the Matter of NES to which the Information relates.
- (c) Where Information has any of the characteristics listed in clause 7.2(b) any exchange of this Information between the parties will be subject to appropriate information management practices and protocols.

7.3 Public access – particular needs groups

- (a) WA will make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to comment on actions assessed under the Accredited Process.
- (b) The parties note that Indigenous people affected by a proposed action may have particular communication needs, and will make arrangements to ensure that affected Indigenous people have reasonable opportunity to comment on actions assessed and approved in accordance with this Agreement.

7.4 Public comments

WA will accept and consider comments in relation to an action to which the declaration in clause 4.1 applies from persons located anywhere in Australia where the comments are properly made in accordance with the relevant Accredited Process.

8. Co-operation

8.1 Consideration of proposed actions

A Commonwealth agency may notify WA of an action by a third party that may require assessment under an Accredited Process.

8.2 Open access to Information

- (a) The parties will undertake the initiatives listed in Schedule 2, to the extent of available resources.
- (b) The initiatives in Schedule 2 give effect to the following principles for open access to Information about the environment and regulated actions:
 - (i) Information is discoverable, accessible and reusable by the community, business, government and other stakeholders;
 - (ii) Information is published and described in a way that maximises discovery and reuse, preferably online, and in open formats;
 - (iii) Information is published at the highest resolution and accuracy available; and
 - (iv) Under appropriate circumstances, Information is released at minimal cost to users.
 - (v) Under appropriate circumstances, Information is published under licensing arrangements that are not restrictive.
- (c) Clause 8.2(b) will not be taken to have been breached where the circumstances in clause 7.2(b) apply.

8.3 Guidance documents

- (a) The parties commit to cooperating in the development, maintenance, review, and implementation of guidance documents relating to Matters of NES and the operation of this Agreement.
- (b) For the purposes of this clause 8.3, guidance documents may include:
 - (i) generic advice (as opposed to advice on particular projects) regarding whether referral to the Commonwealth Minister is required under the EPBC Act or may alternatively be made under an Accredited Process;
 - (ii) referral/application guidelines in relation to significant impacts on Matters of NES;
 - (iii) guidance documents for species and ecological communities in accordance with Schedule 3; and
 - (iv) policies relating to Matters of NES prepared by the Commonwealth that would impact on the operation of this Agreement.

8.4 Heritage management plans

The parties agree to work cooperatively, on an ongoing basis, to prepare and implement

- (a) management plans for:
 - (i) World Heritage properties under section 321 of the EPBC Act, and
 - (ii) National Heritage places under section 324X of the EPBC Act; or
- (b) suitable alternatives to those plans such as strategic assessments under Part 10 of the EPBC Act or assessment guidelines for a World Heritage property or National Heritage place.

8.5 Sharing Information – ongoing EPBC Act matters

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- (a) The parties note that the Commonwealth remains responsible for compliance and enforcement under the EPBC Act, for actions to which that Act continues to apply.
- (b) The parties agree to share Information and co-operate on compliance activities for actions to which the EPBC Act may continue to apply (which may include actions that are not approved under an Accredited Process, or approved by the Commonwealth Minister before the Commencement Date).
- (c) Each party will use its best endeavours to notify each other of actions in WA that have been taken without approval and have resulted, or are likely to result, in a significant impact on a Matter of NES.
- (d) The Commonwealth will use its best endeavours to inform WA before commencing enforcement action against a person for a contravention of Parts 3 to 9 of the EPBC Act for an action in WA.
- (e) WA will use its best endeavours to inform the Commonwealth before commencing enforcement action against a person for taking an action to which the EPBC Act may continue to apply.

9. Administrative Arrangements

9.1 Administrative Arrangements

To ensure that the requirements of this Agreement are administered co-operatively and efficiently, the parties will jointly develop Administrative Arrangements:

- (a) for the implementation of this Agreement;
- (b) which may include co-operative arrangements for the assessment and approval of actions proposed in WA, but which are not within the scope of this Agreement; and
- (c) which may include guidelines on the exchange of Information for the purposes of clause 8.2,

within three months of the Commencement Date.

9.2 Senior Officers' Committee

- (a) The Administrative Arrangements will detail and provide for the establishment of a Senior Officers' Committee to oversee the implementation of this Agreement.
- (b) The Senior Officers' Committee will meet at least quarterly in the first 12 months after the Commencement Date, and then at least every 6 months.
- (c) Terms of reference for the Senior Officers' Committee will be set out in the Administrative Arrangements.
- (d) Without limiting the terms of reference for the Senior Officers' Committee, the Senior Officers' Committee will in each year after the Commencement Date, other than a year in which a review is undertaken under clause 12, evaluate the operation of this Agreement (which may include an evaluation done by an audit or other review).
- (e) An evaluation under clause 9.2(d) may include, but is not limited to, an evaluation of:
 - (i) systemic outcomes relating to this Agreement; and
 - (ii) the operation of this Agreement;

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against key performance indicators identified for the purpose of this clause in the Administrative Arrangements.

- (f) The parties agree that a report of the evaluation will be published on the Department's website as soon as practicable after it is completed. The parties will agree on the content of the report to be published.
- (g) The costs of evaluations under this clause 9.2 will be shared jointly between the parties.

Note: The parties intend that the Senior Officers' Committee will have alternating Chairs; and will deal with both specific matters arising, including matters in dispute, but also be responsible for the ongoing operation of the Agreement, including making recommendations to governments on a continuous improvement basis, and considering the implications of any legislative or other system changes proposed by either party.

- (h) Documents prepared for the Senior Officers' Committee and records of discussions in the Senior Officers' Committee may only be disclosed by agreement between the parties and only if the Information is not:
 - (i) confidential in nature; or
 - (ii) the personal Information of an individual; or
 - (iii) likely to be considered sensitive by an indigenous group (including a kinship group), including Information relating to the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group; or
 - (iv) environmentally sensitive Information that, if published or published in a particular manner, may increase the risk of damage to a specific Matter of NES.

10. Escalation

10.1 Escalation process

- (a) Acting in a spirit of cooperation, the parties agree that any dispute or concern arising during the course of this Agreement will be dealt with as follows:
 - (i) the party claiming that there is a dispute or concern will advise the other party and set out the nature of the dispute or concern;
 - (ii) the parties will seek to resolve the matter by direct negotiation using their best endeavours and as early as practicable; and
 - (iii) discussions aimed at resolving the dispute or concern will normally take place in the following order, before the exercise of the rights described in clauses 10.3 or 10.4:
 - (A) at senior officials level, between relevant officers of the Senior Officers' Committee;
 - (B) between the Secretary of the Department and the CEO or General Manager of the Office of the Environmental Protection Authority;
 - (C) between the Commonwealth Minister and the WA Minister.
- (b) In response to a dispute about the operation of this Agreement arising under clause 10.1(a), either party may undertake an evaluation (which may include an evaluation done by an audit or other review), if:

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- (i) in the opinion of the initiating party, there has been or is likely to be an adverse systemic outcome relating to this Agreement, whether or not the outcome relates to a failure to comply with this Agreement; and
 - (ii) the reasons for that opinion are provided to the other party before the evaluation is initiated; and
 - (iii) the parties have consulted on the terms of reference for the evaluation and, if relevant, the appointment or nomination of a person to undertake the evaluation.
- (c) The parties will cooperate in an evaluation under clause 10.1(b) to the extent they consider reasonable.
 - (d) The party responsible for arranging an evaluation under clause 10.1(b) may publish that report of that evaluation, after consulting the other party.
 - (e) Any financial cost incurred in undertaking an evaluation under clause 10.1(b) to (c) will be borne by the party which arranges the evaluation.
 - (f) This clause is subject to the rights and obligations of each party under relevant provisions of the EPBC Act (including those sections dealing with cancellation and suspension of bilateral agreements).

10.2 Notice of particular interest

- (a) If the Commonwealth considers that, based on substantial information, the taking of an action may result in serious and irreversible damage to a Matter of NES, the Secretary of the Department may issue a notice of particular interest (a Notice) to WA in relation to that action. Unless unforeseen circumstances arise, the Secretary will seek to issue a notice of particular interest at an early stage of the Accredited Process for a particular action.
- (b) Before issuing a Notice under clause 10.2(a), the parties will seek to consult the relevant proponent or applicant, and consider the matter in the Senior Officers' Committee.
- (c) The Notice, and the reasons for issuing the Notice, will be published on the Department's website.
- (d) WA agrees to respond promptly to any Notice issued under clause 10.2(a) and that this response will be published on the Department's website.
- (e) Subsequent to a Notice being issued under clause 10.2(a), if the Secretary considers that the matter has been adequately resolved, a statement to that effect and reasons will be published on the Department's website as soon as practicable after the matter has been resolved.
- (f) The Secretary cannot issue a Notice under clause 10.2(a) if that action has already been approved in accordance with an Accredited Process.

10.3 Determination by the Commonwealth Minister

- (a) Where the Commonwealth Minister considers that WA:
 - (i) is considering or proposing to make a decision that may result in serious or irreversible damage to a Matter of NES; and
 - (ii) the decision may substantially not meet the requirements for decision-making as defined in clause 10.5,the Commonwealth Minister may determine that the action is not within the class of actions to which clause 4.1 applies.

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- (b) The Commonwealth Minister cannot make a determination under clause 10.3(a) in relation to a particular action if that action has already been approved in accordance with an Accredited Process.
- (c) The parties will seek to consult the relevant proponent or applicant, and consider the matter in accordance with the process set out in clause 10.1, before any determination is made in respect of an action.
- (d) Notice of the determination will be published on the Department's website.
- (e) The Commonwealth Minister does not have a duty to consider whether to make a determination under clause 10.3(a) in respect of any action.
- (f) A reference to the Commonwealth Minister in this clause 10.3 does not include a reference to the person authorised by the Minister for the purposes of this Agreement or to a delegate of the Minister.

10.4 Determination by the WA Minister

- (a) Where the WA Minister or CEO is considering or proposing to make a decision:
 - (i) that may result in Serious Environmental Harm to a Matter of NES; or
 - (ii) that may substantially not meet the requirements for decision-making as defined in clause 10.5,the WA Minister may determine that the action is not within the class of actions to which clause 4.1 applies. The WA Minister will, as soon as practicable, but in any event no later than 10 business days after making the determination, notify the Commonwealth Minister of the proposed decision.
- (b) The WA Minister cannot make a determination under clause 10.4(a) in relation to a particular action if that action has already been approved in accordance with an Accredited Process.
- (c) The parties will seek to consult the relevant proponent or applicant, and consider the matter in accordance with the process set out in clause 10.1, before any determination is made in respect of an action.
- (d) Notice of the determination will be published on the Department's website.
- (e) The WA Minister does not have a duty to consider whether to make a determination under clause 10.4(a) in respect of any action.
- (f) A reference to the WA Minister in this clause 10.4 does not include a reference to the person authorised by the Minister for the purposes of this Agreement or to a delegate of the Minister.

10.5 Requirements for decision-making

For the purpose of clause 10 of this Agreement, a decision may substantially not meet requirements for decision-making if that decision would substantially not meet the requirements for decision-making in clauses 6.1, 6.2, 6.3 and 6.5 (decisions on approval) of this Agreement.

Note: In addition to the requirements for decision-making in clauses 6.1-6.5, the general principles of administrative decision-making continue to apply, for example, decision affected by bias would not meet these requirements.

10.6 Obligations continue

Despite the existence of a dispute or concern, the issue of a notice or a determination by either party under clauses 10.2-10.4, both parties will continue to perform their respective obligations under this Agreement, except to the extent:

- (a) this Agreement is suspended or cancelled in accordance with the EPBC Act; or
- (b) that those obligations are affected by a determination by either party under clauses 10.3-10.4.

11. Reports and Additional Information

11.1 Reports

- (a) Each year on a date specified in the Administrative Arrangements (or such other time agreed in writing between parties), WA will provide reports to the Commonwealth for the purpose of the Department's annual reporting obligations under the EPBC Act, including an analysis of how this Agreement has been implemented.
- (b) Reports provided to the Commonwealth under clause 11.1(a) will include, at a minimum:
 - (i) the number of proposed actions under assessment under the Accredited Processes in the preceding 12 months;
 - (ii) the number of actions approved in accordance with an Accredited Process in the preceding 12 months;
 - (iii) the time taken for assessments and approvals under the Accredited Processes;
 - (iv) Information on the Matters of NES relating to actions approved under the Accredited Processes;
 - (v) operation of the WA system for monitoring compliance with conditions of approval for actions approved under the Accredited Processes (for example, numbers of audits or compliance incidents relating to Matters of NES);
 - (vi) how any public complaints relating to the Accredited Processes were addressed. For the purposes of the annual report, only complaints made that concern the administration of the Accredited Process in relation to Matters of NES are relevant. To avoid doubt, public submissions made in the course of the Accredited Process are not complaints for the purpose of this clause; and
 - (vii) other Information reasonably requested by the Commonwealth to meet its annual reporting obligations under the EPBC Act.
- (c) WA will provide other Information to the Commonwealth (which may be detailed in the Administrative Arrangements) to meet reporting commitments to the World Heritage Committee, for proposed actions that are likely to have a significant impact on a World Heritage property where such information is not already publicly available.
- (d) An agreed form of reporting will be set out in the Administrative Arrangements, with reporting requirements to be tailored to WA systems and processes.

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- (e) For the purpose of meeting the requirements of clause 11.1(a) of this Agreement, a separate report is not required to be prepared by WA if the required information specified in clause 11.1(b) is publicly available in a form that is appropriately accessible and adapted to allow the Commonwealth to efficiently meet all relevant reporting obligations.

11.2 Additional Information

- (a) Each party will comply promptly with any reasonable request from the other party to supply Information relating to this Agreement where that Information is not already publicly available, and noting that the Commonwealth will seek to rely on publicly available Information to the extent practicable.
- (b) For the purposes of clause 11.2(a), 'Information' may include proposed decisions (however described) for actions to which this Agreement applies.
- (c) The Commonwealth may from time to time, request WA to provide copies of studies, reports and other Information (including non-published Information) relating to this Agreement, where those studies, reports or other Information are in the possession of WA.

12. Review

12.1 Five year reviews

- (a) A review of the operation and effectiveness of this Agreement must be carried out at least once every five years while the Agreement remains in effect in accordance with section 65 of the EPBC Act.
- (b) Each review of this Agreement will be carried out jointly as agreed by the Senior Officers' Committee with each party meeting their own costs.
- (c) Each review will include an evaluation of the operation and effectiveness of this Agreement against the objects of this Agreement. For the purpose of each review, the parties may specify key performance indicators in the Administrative Arrangements.
- (d) Following consultation with the relevant WA Minister, the Commonwealth Minister must publish the report of each review in accordance with the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), and give a copy of the report of each review to WA, as soon as practicable after the review is completed.

12.2 Transitional reviews

- (a) An initial review of the operation of this Agreement will be carried out within two years after the commencement of the Agreement.
- (b) The transitional review under this clause 12.2 will be undertaken by the Senior Officers' Committee, unless the parties decide otherwise.
- (c) The focus of the transitional review will be whether the objects of this Agreement are being achieved and whether the Agreement has been implemented and is working effectively. For the purpose of the review, the parties will also specify key performance indicators in the Administrative Arrangements.
- (d) The parties may seek public comments for the purpose of the transitional review under this clause 12.2.

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- (e) The Commonwealth may, after consulting WA, publish the results of the transitional review under this clause 12.2 as soon as practicable after the review is completed.
- (f) The parties may choose not to undertake a transitional review of this Agreement if, before that review would have otherwise been taken:
 - (i) the need to make another bilateral agreement or vary or replace this Agreement is identified following the amendment or proposed amendment of legislation as envisaged by clause 16.3; or
 - (ii) the Agreement is subject to an evaluation under clause 9.2(d) or clause 10.1(b)

12.3 Third party studies

- (a) A review under clauses 12.1 or 12.2 may include studies, evaluations and other activities intended to analyse the success of the Agreement in achieving its objectives.
- (b) Each party will, if requested by the other for the purpose of a review, and at the requesting party's expense:
 - (i) allow agreed third parties reasonable access to the offices of WA Public Service agencies to undertake analysis and evaluation of the Agreement; and
 - (ii) make relevant records and other Information available to third parties for the purposes of the evaluation and analysis.

13. Audits

13.1 Commonwealth Auditor-General

The parties recognise that, under the *Auditor-General Act 1997* (Cth), 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.

13.2 WA Auditor-General

The parties recognise that, under the *Auditor-General Act 2006* (WA), the Western Australian Auditor-General may audit the operations of the WA public sector in relation to this Agreement.

14. Rectification

WA is responsible for following the Accredited Process in relation to an action to which the declaration in clause 4.1 applies, and addressing any issues that arise out of a failure to follow the Accredited Process.

15. Suspension or cancellation

15.1 By Commonwealth Minister

Sections 57 to 64 of the EPBC Act provide that the Commonwealth Minister may cancel or suspend all or part of this Agreement (either generally or in relation to actions in a specified class, or for a particular provision of Part 3 of the EPBC Act to which the Agreement relates)

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under certain circumstances. Sections 57 to 64 of the EPBC Act also set out a process for consulting on the cancellation or suspension of all or part of this Agreement.

15.2 At the request of WA Minister

- (a) Section 63 of the EPBC Act requires the Commonwealth Minister at the request of the WA Minister to cancel or suspend all or part of this Agreement if the request is made in accordance with this Agreement.
- (b) A request by the WA Minister under section 63 of the EPBC Act to cancel or suspend all or part of this Agreement is made in accordance with this Agreement if before making the request, the WA Minister has consulted with the Commonwealth Minister in writing about the reasons for requesting the suspension or cancellation and allowed a period of at least 20 business days for the Commonwealth Minister to respond.

16. Amendment

16.1 Continuous improvement

The parties will notify and consult each other on matters that come to their attention that may improve the operation of this Agreement. The Administrative Arrangements may detail notification and consultation procedures to give effect to this clause.

16.2 Minor amendment

- (a) The parties note that section 56A of the EPBC Act provides that the Commonwealth Minister may make a written determination that an intended draft amendment to a bilateral agreement will not have a significant effect on the operation of the Agreement.
- (b) Before making a determination under section 56A of the EPBC Act, the Commonwealth Minister must seek agreement of the WA Minister on the wording of the amendment.

16.3 Amendment of legislation

If the EPBC Act or EP Act or any other Accredited Process is subsequently amended, or proposed to be amended, in a manner that would affect the operation of this Agreement, the parties agree to promptly notify each other and the parties will seek to agree as soon as practicable on:

- (a) the potential impact of the amendments on the operation of this Agreement; and
- (b) whether it is necessary to make another bilateral agreement varying or replacing this Agreement.

17. Freedom of information

- (a) If a party receives any request, including under freedom of information Laws, for any documents originating from another party which are not otherwise publicly available, the parties will, subject to the requirements of relevant freedom of information Laws, consult on the release of those documents.
- (b) The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met.

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18. General provisions

18.1 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

18.2 Notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication.

18.3 Disclosure of Information

Notwithstanding any other provision of this Agreement, the Department or WA may disclose Information about this Agreement required to be reported by the Department or WA.

Schedule 1 – Declared class of actions

1. Background

1.1 Background

Section 46(1) of the EPBC Act relevantly provides that a bilateral agreement may declare that actions in a class of actions specified in the Agreement wholly or partly by reference to the fact that their taking has been approved in accordance with a bilaterally accredited authorisation process for the purpose of the Agreement do not require approval under Part 9 of the EPBC Act for the purpose of a specified provision of Part 3 of the EPBC Act.

1.2 Interpretation

In this Schedule:

- (a) "Administrative Procedures" means the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012* as made under section 122 of the EP Act;
- (b) "Item" means an item of this Schedule 1; and
- (c) unless otherwise defined in this Agreement, each term has the same meaning as it has in the EP Act.

2. Specified provisions of Part 3 of the EPBC Act

2.1 For the purposes of the declaration in clause 4.1 of this Agreement, this item 2 specifies the relevant provisions of Part 3 of the EPBC Act for which an approval under Part 9 is not required if the action concerned is in a class of actions specified in item 4.

2.2 An action in a class specified in item 4.1(a) or (b) of this Schedule does not require approval under Part 9 of the EPBC Act for the purpose of the following provisions of Part 3 of the EPBC Act:

- (a) sections 12 and 15A of the EPBC Act (World Heritage properties);
- (b) sections 15B and 15C of the EPBC Act (National Heritage places);
- (c) sections 16 and 17B of the EPBC Act (Ramsar wetlands);
- (d) sections 18 and 18A of the EPBC Act (listed threatened species and ecological communities);
- (e) sections 20 and 20A of the EPBC Act (listed migratory species);
- (f) sections 21 and 22A of the EPBC Act (nuclear actions);
- (g) sections 23 and 24A of the EPBC Act (Commonwealth marine environment); and
- (h) section 26 and 27A of the EPBC Act (Commonwealth land).

Note: Consistent with clause 4.2(c) and Schedule 1 Item 4.3, this Agreement does not apply to actions in the Commonwealth marine area or in Commonwealth land. This Agreement may apply to actions outside the Commonwealth marine area or outside Commonwealth land which are likely to, respectively, have a significant impact on the Commonwealth marine environment or Commonwealth land.

2.2 An action in a class specified in item 4.1(c) of this Schedule does not require approval under Part 9 of the EPBC Act for the purpose of the following provisions of Part 3 of the EPBC Act:

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- (a) sections 12 and 15A of the EPBC Act (World Heritage properties);
- (b) sections 15B and 15C of the EPBC Act (National Heritage places);
- (c) sections 16 and 17B of the EPBC Act (Ramsar wetlands);
- (d) sections 18 and 18A of the EPBC Act (listed threatened species and ecological communities);
- (e) sections 20 and 20A of the EPBC Act (listed migratory species);
- (f) sections 23 and 24A of the EPBC Act (Commonwealth marine environment);
- (g) section 26 and 27A of the EPBC Act (Commonwealth land).

Note: Consistent with clause 4.2(c) and Schedule 1 Item 4.3, this Agreement does not apply to actions in the Commonwealth marine area or in Commonwealth land. This Agreement may apply to actions outside the Commonwealth marine area or outside Commonwealth land which are likely to, respectively, have a significant impact on the Commonwealth marine environment or Commonwealth land.

3. Authorisation processes

For the purposes of this Agreement, the following Accredited Processes, and the Laws of WA in which they are set out, are identified:

- (a) the process set out in the Laws of WA for the authorisation of a proposal by way of an implementation agreement or decision set out in a statement served and published under section 45(5) of the EP Act, where the proposal is a proposal that has been assessed:
 - (i) in accordance with the Assessment on Proponent Information category A level of assessment under the Administrative Procedures;
 - (ii) in accordance with the Public Environmental Review level of assessment under the Administrative Procedures; or
 - (iii) by public inquiry under section 40(2)(c) of the EP Act;or after the publication of the statement under s 45(5) of the EP Act in respect of the proposal, the WA Minister has authorised the proponent changing the proposal under section 45C of the EP Act;
- (b) the process set out in the Laws of WA for the authorisation of a proposal by way of:
 - (i) a declaration by the EPA that the proposal is a derived proposal under section 39B of the EP Act;
 - (ii) the taking effect under section 45A(2) of the EP Act of an implementation agreement or decision that was previously the subject of a statement under section 45(5) of the EP Act in relation to the proposal; and
 - (iii) by the giving of a notice by the WA Minister under section 45A(2) of the EP Act,

where the strategic proposal in which the derived proposal was identified was assessed by Public Environmental Review or Assessment on Proponent Information under the Administrative Procedures, or after the strategic proposal having been so assessed and the subject of a statement published under section 45(5) of the EP Act, the WA Minister has authorised the proponent changing the proposal under section 45C of the EP Act;

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- (c) the process set out in the Laws of WA for the authorisation of an action that is clearing of native vegetation under Part V, Division 2 of the EP Act, being the process for the grant of (or amendment to) a permit, except for purpose permits defined under section 51E(8) of the EP Act where impacts to MNES are not assessed before the grant of the permit, where:
 - (i) the application has been assessed in accordance with *A guide to the assessment of applications to clear native vegetation under Part V of the Environment Protection Act 1986* and section 51O of the EP Act, and
 - (ii) a decision report has been prepared in accordance with *A guide to the assessment of applications to clear native vegetation under Part V of the Environment Protection Act 1986*,including by the taking effect of a decision of the WA Minister under Part VII of the EP Act following an appeal under section 101A of the EP Act.

4. Class of actions

4.1 Specified class of actions

For the purpose of clause 4.1 of this Agreement, subject to Items 4.2, 4.3 and 4.4, the following classes of actions are specified:

- (a) an action, being a proposal:
 - (i) that is authorised to be taken under the Accredited Process described in Item 3(a);
 - (ii) that, if the proposal has been assessed in accordance with the Assessment on Proponent Information category A level of assessment under the Administrative Procedures – the draft assessment documentation for that proposal describes:
 - (A) the proposed action;
 - (B) the likely relevant impacts;
 - (C) to the extent practicable, any feasible alternatives to the proposed action; and
 - (D) possible mitigation measures,
 - (iii) that was released for public comment prior to the referral of the action to the EPA or otherwise at some time prior to the finalisation of the assessment report prepared by the EPA under section 44 of the EP Act; where the statement published under section 45(5) of the EP Act authorising the taking of the action is published after the Commencement Date and remains in force under the EP Act;
- (b) an action, being a derived proposal:
 - (i) that is authorised to be taken under the Accredited Process described in Item 3(b);
 - (ii) for which the strategic proposal in which the derived proposal was identified is a proposal to which Item 4.1(a) applies;

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- (c) an action:
 - (i) for which the only impacts that the action has, will have or is likely to have on Matters of NES are from the clearing of native vegetation;
 - (ii) in relation to which the application required under section 51E(1) of the EP Act that describes:
 - (A) the proposed action;
 - (B) the likely relevant impacts;
 - (C) to the extent practicable, any feasible alternatives to the proposed action; and
 - (D) possible mitigation measures,was released for public comment prior to the finalisation of the assessment report referred to in Item 4.1(c)(iii);
 - (iii) for which an assessment report was prepared by the CEO, which takes into account:
 - (A) the Information in the application submitted under section 51E (or if the application is to amend a clearing permit, section 51M) of the EP Act; and
 - (B) the clearing principles, planning instruments and other relevant matters considered under section 51O of the EP Act;prior to the permit being granted under Item 4(c)(iii);
 - (iv) that is authorised to be taken in accordance with a permit granted or amended under the Accredited Process described in Item 3(c); and
 - (v) where the permit referred to in Item 4.1(c)(iv) was granted after the Commencement Date and remains in force under the EP Act.

4.2 Nuclear actions

Item 4.1 does not apply to an action consisting of or involving the construction or operation of any of the following nuclear installations referred to in sections 140A(a) to (d) of the EPBC Act:

- (a) a nuclear fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant; and
- (d) a reprocessing facility.

4.3 Commonwealth marine areas and Commonwealth land

Consistent with section 49 of the EPBC Act, Item 4.1 does not apply to an action within a Commonwealth area. However, Item 4.1 does apply to an action taken outside a Commonwealth area which is likely to have a significant impact on that area.

4.4 Further exclusions

Item 4.1 does not apply to an action if:

- (a) the Commonwealth Minister or the WA Minister has determined, under clause 10.3 or clause 10.4 of this Agreement, that it is not an action to which the declaration in clause 4.1 of this Agreement applies; or

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- (b) it is an action to which the declaration in clause 4.1 of this Agreement does not apply because of the operation of clause 4.2, clause 4.3 or clause 4.4(a) of this Agreement.

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Schedule 2 – Open access to Information

1. Background

Open Information in the environmental domain brings a range of benefits, including:

- (a) enabling business to access existing information rather than duplicate it;
- (b) reducing transactional costs for all stakeholders by removing the need to negotiate licences to access information;
- (c) all stakeholders can access Information relevant to them;
- (d) allowing decisions to be made using the same information base;
- (e) enabling innovation by using Information differently to the purpose for which it was obtained; and
- (f) helping to ensure that all Information used for decisions is fit for that purpose.

2. Information scope

- (a) Examples of public sector Information about environment and heritage, to which this Schedule and clause 8.2 applies, include:
 - (i) listed Matters of NES (including location and condition of critical habitats for species);
 - (ii) other flora and fauna species including migratory species, ecological communities, wetlands, cultural and natural heritage places, marine environments;
 - (iii) threatening processes and prevalence of threats;
 - (iv) natural and cultural heritage places and sites;
 - (v) water and air quality; and
 - (vi) nature and location of offsets.
- (b) Examples of public sector Information about regulated activities to which this Schedule and clause 8.2 applies, include:
 - (i) locations and details of referred projects and approved projects;
 - (ii) public comments, or a summary of public comments and responses;
 - (iii) project approval compliance information;
 - (iv) geographic areas protected in reserves, parks, protected land and 'corridor', areas subject to conservation covenants or rehabilitation activities or offsets agreed as part of a project approval; and
 - (v) geographic areas subject to development planning decisions.

3. Initiatives

- (a) The parties recognise that capacity to implement open Information initiatives is dependent on the resources available.
- (b) The parties will seek to give practical effect to the principles for open access to Information in clause 8.2(b), by implementing initiatives such as those listed below.

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Initiative
Publish and maintain public availability of all assessment reports, implementation agreements or decisions, and clearing permits.
Maintain, develop and improve the WA Environmental Offsets Register as a central public record of all offsets agreements in Western Australia.
Progress the development of the Western Australia Biodiversity Science Institute.
Maintain FloraBase or a similar replacement as a publicly accessible web-based database of the flora of Western Australia.
Maintain public access to information held by the Department of Aboriginal Affairs on registered Aboriginal Sites and other heritage places through the Aboriginal Heritage Inquiry System (AHIS).
Require proponents and applicants to make all validated environmental data relevant to an assessment and implementation of a proposal or clearing permit publicly available.
Provision of available Information listed in Item 2(a) and (b) of this Schedule held by the Commonwealth, to WA.

Schedule 3 – Guidance for Matters of National Environmental Significance

1. Background

1.1 Streamlining and provision of advice

- (a) The Commonwealth and WA undertake to progressively streamline policy and guidance documents by recognising WA policies and guidance documents in the Administrative Arrangements that achieve the same outcomes as equivalent Commonwealth documents.
- (b) As per clause 6.3, all guidance material and relevant policies and plans, identified for the purpose of that clause, will be detailed in the Administrative Arrangements.
- (c) Where the Commonwealth holds specific expert advice that could be made available to WA to assist with decision making, WA may seek and take into account that expert advice.

1.2 Guidance documents

- (a) The Commonwealth develops guidelines, advice, plans and other documents for particular species and ecological communities, to guide assessments and approvals, as well as long term conservation and management efforts.
- (b) The Commonwealth will continue to develop such guidance documents as needed to support the effective operation of bilateral agreements.
- (c) The parties note that there will continue to be a need to provide certainty, clarity and consistency in decisions regarding listed species and ecological communities, particularly those that cross State and Territory borders. Documents that support this include:
 - (i) statutory documents:
 - (A) approved conservation advice;
 - (B) recovery plans;
 - (C) threat abatement plans;
 - (D) wildlife conservation plans;
 - (E) advice provided by the Threatened Species Scientific Committee under section 190 of the EPBC Act; and
 - (F) advice provided by the Threatened Species Scientific Committee under section 189 of the EPBC Act.
 - (ii) non-statutory documents, such as:
 - (A) listing advice from the Threatened Species Scientific Committee;
 - (B) the Commonwealth's Species Profile and Threats database profiles;
 - (C) ecological community guidelines and fact sheets;
 - (D) Matters of NES significant impact guidelines; and

(E) survey guidelines.

1.3 Improving guidance documents

In consultation with the States and Territories, the Commonwealth will, from time to time, review the guidance documents outlined in Item 1.2 of this Schedule, including to:

- (a) revise approved conservation advices, recovery plans, threat abatement plans and other guidance documents for listed threatened species and ecological communities as progress is made on recovery actions and as knowledge of a species' or ecological community's ecology or distribution changes; and
- (b) continue to develop a range of strategic responses to the conservation of threatened species and ecological communities including regional recovery planning approaches.

2. Co-operation

- (a) The Commonwealth will seek the views and co-operation of WA (and other States and Territories) to develop and review the guidance documents identified in Item 1 of this Schedule.
- (b) Without limiting Item 2(a), WA will participate in the consideration and development of guidance documents in the following ways:
 - (i) priorities for the development of guidance documents will be informed by comments provided by WA;
 - (ii) responsibilities for drafting guidance documents will be discussed between the Department and States and Territories; and
 - (iii) the Commonwealth will seek endorsement from the relevant States and Territories for the content of guidance documents, subject to the responsibilities of the Commonwealth Minister and the Threatened Species Scientific Committee under the EPBC Act. Disputes about priorities or the content of advice notes will be addressed through best endeavours at resolution. If this fails, the Commonwealth will make a decision on the disputed matter.

Execution page

EXECUTED as an Agreement

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by:

The Hon Greg Hunt MP
Minister for the Environment

Date

SIGNED for and on behalf of WA by:

The Hon Albert Jacob MLA
Minister for Environment

Date

s47F

Subject: WA Bilateral Agreement Mtg 2
Location: .Rm PH 5.20 Beelya, River (COVID-19 capacity 3, Skype)

Start: Fri 14/08/2020 2:00 PM
End: Fri 14/08/2020 5:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s47F

Good Afternoon All

Apologies for the late rescheduling of this meeting. We consider that the meeting will be more productive if we have additional time to prepare.

The intent is to complete going through the 2014 draft agreement and create a list of Issues for both the State and Commonwealth to resolve, noting that the current date for finalisation of the agreement is Tuesday 25th of August.

Kind Regards

s47F

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To: Minister for the Environment

Cc: Assistant Minister for Waste Reduction and Environmental Management

MEETING BRIEF - THE HON STEPHEN DAWSON MLC, MINISTER FOR ENVIRONMENT; DISABILITY SERVICES; ELECTORAL AFFAIRS

Timing: For meeting on 24 June 2020 at 11am

Meeting with: the Hon Stephen Dawson MLC, Minister for Environment; Disability Services; Electoral Affairs

Prior meetings: You have had past engagements with the Hon Stephen Dawson MLC.

Proposed note taker: James Tregurtha, First Assistant Secretary, Environment Protection Reform Taskforce

What we want: EPBC Act Review: To reiterate that streamlining of approvals should be informed by the EPBC Act Review Interim Report. To note that devolution of approval powers should be supported by clear standards to assure the community that outcomes will be delivered. s22

s22

What they want: Minister Dawson is likely to be interested in the Government's position on devolution of approvals, and expected directions for the EPBC Act review; s22

s22

Issues and Sensitivities:

1. s22

2. It is expected Professor Samuel will highlight that devolution of approval powers should be supported by standards that specify the environment outcomes that need to be delivered by decision makers under the Act.
 - a. Any jurisdiction seeking accreditation to have devolved EPBC Act approval powers would need to meet a single set of standards that clearly and succinctly reflect the outcomes needed under the Act.
 - b. An interim standard could be used to get devolution underway with willing states, with a requirement to build on those interim standards over time.

Clearing Officer: Sent: 24/6/2020	James Tregurtha	First Assistant Secretary, Environment Protection Reform Taskforce (EPRT)	s47F
Contact Officer:	Bruce Edwards	Assistant Secretary, EPRT	

3. On 15 June 2020, the Prime Minister publicly stated that further streamlining of Commonwealth and state processes would be discussed with the National Cabinet, informed by the EPBC Act Review interim report. The Prime Minister verbally endorsed Western Australia's legislative changes to accelerate major projects and facilitate bilateral arrangements.

s22

Consultation: YES Environment Protection Division, Environmental Approvals Division

Talking Points

EPBC Act Review

s22

- There's also the opportunity to progress changes to support the devolution of approval powers. Amendments to the EPBC Act are essential to ensure devolution will be robust.
- It will be important to assure the community that any devolution of approval powers is supported by clear standards that clarify the environmental outcomes needed.
- Clear rules and assurance are essential. This is underscored by recent events in WA where questions were raised about the adequacy of state-level protection of indigenous heritage and the Commonwealth's role in protecting the national interest.
- It remains important that we do not pre-empt the EPBC Act review process.

s22

s22

From: [Edwards, Bruce \(Protected\)](#)
To: s47F
Cc: [Fontana, Simon \(Protected\)](#); [Knudson, Dean \(Protected\)](#); [Tregurtha, James \(Protected\)](#); s47F
Subject: TPs re standards
Date: Tuesday, 23 June 2020 10:00:55 PM

Hi s47F

As discussed, see below some additional talking points regarding standards to support tomorrow's discussion with Minister Dawson. These are designed to help should detail be needed on how standards fit into the timing in terms of the changes for bilats.

Bruce Edwards

Assistant Secretary - Environment Protection Reform

s47F

Talking points

- Graeme Samuel is due to deliver his Interim Report on the EPBC Act Review next week.
- He will likely strongly support devolved decision making, as long as this is underpinned by a set of national standards that set out the environmental outcomes that need to be delivered.
- The standards would be based on the existing regulatory requirements the Commonwealth applies through the EPBC Act and will specify and clarify outcomes without being overly prescriptive as to how they are achieved.
- Professor Samuel's Interim Report will include an early prototype of what interim standards could look like, and these could provide a basis for jointly developing a bilateral approval agreement this year.
- Given the statutory steps needed to make and implement an approval bilateral agreement, and the need to amend the Act in August/September to ensure approval bilaterals are robust, the Commonwealth would seek to test these prototype standards with key stakeholders in July.
- To be accredited, states would need to demonstrate that their regulatory systems could meet the standards. Meeting the rules of the Act is an existing requirement.
- In the medium term the interim standards would be replaced by a finalised set of standards, following input from stakeholders including scientists, business and states. Over time the Standards would be regularly reviewed and updated as better data becomes available.