



Explainer on EPBC Act reforms: Bilateral Agreements

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NOTE – This Explainer is intended to explain recent reforms to the Environment Protection and Biodiversity Conservation Act 1999 (Cth), however not all amending provisions have commenced at the time of release, and commencement dates of some provisions are not known. If required, EDO recommends seeking specific legal advice in relation to how the reforms might apply to specific projects.

What is this explainer about?

This Explainer outlines what bilateral agreements are and explains the process for entering into them under Part 5 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). It also outlines relevant amendments to the EPBC Act passed in November 2025 (**2025 EPBC Act reforms**) that create new guardrails for bilateral agreements. It provides links to where you can find more information on the status of bilateral agreements in each state and territory.

It does not cover other types of Ministerial accreditation, including declarations made under Part 4, Divisions 2 or 2A.

Outline:

1. [Overview](#)
2. [What is a bilateral agreement?](#)
3. [What types of frameworks can be accredited via a bilateral agreement under the EPBC Act?](#)
4. [New requirements for bilateral agreements under the reformed EPBC Act](#)
5. [New guardrails on devolution \(and their limits\)](#)
6. [Case Studies](#)
7. [Status of assessment bilateral agreements across Australia prior to the EPBC reforms in 2025](#)

Overview

The EPBC Act is Australia's main federal environment law. It requires assessment and approval for projects (referred to as 'actions') that may impact matters of national environmental significance (**MNES**) (such as internationally significant wetlands, listed threatened species, or places on the National or World Heritage List). Where required, approval under the EPBC Act is in addition to any state or territory approval requirements.

What is a bilateral agreement?

A bilateral agreement is a written deal between the Commonwealth government and a state or territory government which aims to streamline these legal requirements, by allowing state or territories to assess or approve projects that would otherwise need Commonwealth assessment or approval.

Bilateral agreements are made under Part 5 of the EPBC Act. There are two types of bilateral agreement:

- **Assessment** bilateral agreements - where the state or territory government carries out the assessment of a project, but approvals under the EPBC Act continue to be undertaken by the federal government.
- **Approval** bilateral agreements - where Commonwealth approval of an action is not needed if the action is approved in accordance with a state or territory management arrangement or authorisation process that has been accredited via a bilateral agreement. In this case, the Commonwealth accepts the state or territory processes as sufficient for protecting MNES and does not require separate EPBC Act approval.

The arrangements seek to shift the operational assessment and approval role toward states and territories. State and territory governments have entered into *assessment* bilateral agreements with the Commonwealth since around 2014-2015, though their operation and continued affect differ depending on the jurisdiction.¹ At this stage, there are no *approval* bilateral agreements in place - drafting of the legal provisions has made it difficult for approval bilateral agreements to be finalised.

What changes have been made to bilateral agreements?

The 2025 EPBC Act reforms make it clearer that the federal government has the power to enter bilateral agreements that hand over federal *approval* powers to state and territory governments.

The process of handing over approval powers is sometimes known as 'devolution' or also 'one stop shop' in previous reform attempts.

¹ Find out more about the status of bilateral agreements in each state or territory on the Commonwealth government's website: <https://www.dcceew.gov.au/environment/epbc/approvals/state-assessments>.

Notably, under the 2025 EPBC Act reforms there is now a requirement for *assessment* bilateral agreements to be entered into prior to *approval* bilateral agreements for all activities except regional forestry agreement activities.²

What types of frameworks can be accredited via a bilateral agreement under the EPBC Act?

Accredited assessment frameworks

Under the EPBC Act, and continuing under the reforms, a state or territory assessment framework that may be accredited includes:

- (a) assessment by any person under a law of the state or territory
- (b) assessment by any person under an agreement or other instrument made under a law of the state or territory
- (c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement³

This means that the framework that is accredited does not need to be provided for under the laws of a state or territory, but may instead be in a policy document or any other document agreed between the federal government and the relevant state or territory government.

Accredited approval frameworks

Under the EPBC Act reforms the Minister must only accredit a management or authorisation framework if satisfied that the framework is *wholly* or *partly* set out in, or *wholly* or *partly* made under:

- (i) a law of the State or Territory; or
- (ii) an instrument made under a law of the State or Territory.⁴

This means that not only approval processes in primary legislation can be accredited, but also processes that sit wholly or partly in an instrument made under a law, such as rules or guidelines or policy documents.

New requirements for bilateral agreements under the reformed EPBC Act

New requirements

The 2025 EPBC Act reforms introduce new requirements for the accreditation of state and territory assessments and approvals.

² *Environment Protection Reform Act 2025 (Cth)*, new EPBC Act s45(3)

³ EPBC Act, s47(3)

⁴ *Environment Protection Reform Act 2025 (Cth)*, new EPBC Act s46(3)

Criteria for accrediting *assessment* frameworks

To accredit a framework for assessment, the Minister must now be satisfied that assessment of an action in the specified manner:

- (a) will include assessment of the impacts the action has or will have, or is likely to have, on each matter protected by a provision of Part 3; and
- (b) will be consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph.

Criteria for accrediting *approval* frameworks

To accredit an approval framework, the Minister must now be satisfied that:

- (a) the framework is, and approving of an action consistent with the framework will be, consistent with applicable national environmental standards prescribed to the decision;⁵
- (b) there has or will be an assessment of the likely impacts an approved action will have on protected matters;⁶
- (c) that approved actions or classes of actions will not have an unacceptable impact on protected matters, as defined under new EPBC Act s527F;⁷
- (d) an action will only be approved under the framework if it passes the net gain test in relation to any residual significant impact on a protected matter;⁸
- (e) the framework provides for the disclosure of greenhouse gas emission information as required under the EPBC Act. This is just for scope 1 and 2 emissions;⁹
- (f) the bilateral agreement requires the state or territory not to approve actions that would be inconsistent with the framework;¹⁰ and
- (g) any other criteria specified by regulation are met.¹¹

Some of these matters are discussed in more detail below, including the new guardrails within these criteria.

There are also additional criteria for specific MNES. For example:

- in the case of a declared Ramsar wetland, the Minister must be satisfied that the framework is not inconsistent with Australia's obligations under the Ramsar

⁵ *Environment Protection Reform Act 2025* (Cth), new EPBC Act ss 46(3)(e) and (f)

⁶ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(g)

⁷ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(h)

⁸ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(i)

⁹ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(j)

¹⁰ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(k)

¹¹ *Environment Protection Reform Act 2025* (Cth), new EPBC Act, new s46(3)(d).

convention, the Australian Ramsar management principles, and any plan prepared for the management of the wetland.¹²

- in the case of a listed threatened species or ecological community the Minister must be satisfied that the provision is not inconsistent with:
 - (a) Australia's obligations under the Biodiversity Convention, or the Apia convention, or CITES, or
 - (b) a threat abatement plan,
 - (c) a protection statement,
 - (d) a recovery plan.¹³

Before deciding whether to accredit an assessment or approval framework, the Minister must have regard to the advice of the CEO of the new National Environmental Protection Agency (**NEPA**).¹⁴

The Minister also has the power to exclude an action from a class of actions under a bilateral approval agreement.¹⁵

Public consultation

The Minister must consult on the draft bilateral agreement for a period of at least 28 days before entering into it.¹⁶

Parliamentary oversight

In relation to the making of approval bilateral agreements only, the EPBC Act requires tabling and enables opposition of the accreditation of management or authorisation framework.¹⁷ This requires the Minister, when proposing to accredit a state or territory's management or authorisation framework for the purposes of a bilateral agreement, to table the following documents in both houses of parliament:¹⁸

- (a) a copy of the documents that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, a law or instrument);
- (b) a notice that the Minister proposes to accredit the framework for the purposes of the agreement.

¹² *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 52(2)

¹³ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 53(1)

¹⁴ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46B

¹⁵ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 65B

¹⁶ *EPBC Act* s 49A.

¹⁷ EPBC Act s33(4)-(8); upon reforms commencing from the *Environment Protection Reform Act 2025* (Cth) these provisions will be in new EPBC Act s33A.

¹⁸ EPBC Act s33(4); upon reforms commencing from the *Environment Protection Reform Act 2025* (Cth) these provisions will be in new EPBC Act s33A(1).

Any Senator or Member of the House of Representatives can move a notice of motion to oppose accreditation of the approval bilateral agreement framework.

The Minister must not accredit the approval bilateral agreement framework if:

- (a) A notice of motion to oppose accreditation of the framework is given in a House of Parliament within the applicable opposition period; and
- (b) within 15 sitting days of the House after the giving of the notice by the Minister, the House passes a resolution, in pursuance of the motion, opposing accreditation of the framework.¹⁹

‘Applicable opposition period’ means the 15 sitting days of the House after the relevant documents are tabled by the Minister.²⁰

There are no equivalent tabling and opposition provisions for *assessment* bilateral agreements, therefore there is no parliament scrutiny of these agreements.

New guardrails on devolution (and their limits)

The criteria for handing over assessment and approval powers to the states and territories includes new guardrails aimed at strengthening environmental protection. Key new guardrails are examined in more detail below.

Unacceptable impacts

A framework can only be approved if actions or classes of actions approved under it will not have an unacceptable impact on any protected matters.²¹ New EPBC Act s 527F provides a definition of unacceptable impacts for each protected matter. For example, an unacceptable impact on a listed threatened species that is critically endangered is:

"a significant impact that (a) seriously impairs the viability of the listed threatened species; or (b) causes serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild".²²

Section 527F introduces new criteria and new terminology which are untested and it is yet to be seen how they will apply in practice.

Net gain

Another guardrail on bilateral agreements is that an accredited framework must only approve a project if it ‘*passes the net gain test*’ in relation to residual significant impacts. Residual significant impacts are those that could not be avoided, mitigated or repaired

¹⁹ EPBC Act s33(5); upon reforms commencing from the *Environment Protection Reform Act 2025* (Cth) these provisions will be in new EPBC Act s33A(2).

²⁰ Ibid.

²¹ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 46(3)(h)

²² *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 527F

while taking the action or while complying with the conditions of approval.²³ An approval passes the net gain test if there are conditions requiring the holder of the approval to:

- (a) compensate for damage to the protected matter caused by the residual significant impact, and/or
- (b) pay a restoration contribution charge in relation to the residual significant impact,

and compliance with these conditions results in a net gain for the protected matter, as prescribed by regulations, or otherwise as the Minister is satisfied is appropriate.²⁴ However, it is not a requirement for regulations to define ‘net gain’, and this may be left up to Ministerial discretion.²⁵ In addition, any requirements in the regulation must be satisfied in relation to compensation for damage to the protected matter.²⁶

National Environmental Standards

Accredited assessment and approval frameworks must be consistent with National Environmental Standards (**Standards**) that are prescribed for these decisions. The government has announced²⁷ that five Standards will apply to the bilateral agreement decisions, being Standards for:

- MNES
- Offsets
- Data and Information
- Community Engagement
- First Nations Engagement

To date as at drafting, public consultation on all except the First Nations Engagement Standard has closed. It is expected the first four Standards will be made mid-2026. The timing for consulting on and finalising the First Nations Engagement Standard is not known.

Water trigger approval cannot be devolved

Where an unconventional gas development and large coal mining development has a significant impact on water resources it triggers the requirement for assessment and approval under the EPBC Act as a MNES – this is known as ‘**the water trigger**’. The Commonwealth will retain the power to approve projects under the water trigger.²⁸ In this case approvals cannot be handed over to states or territories. However, the assessment of these projects can still occur via assessment under a bilateral agreement.

²³ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 527J

²⁴ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 527K(1)(a) and (b)

²⁵ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 527K(1)(b)

²⁶ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 527K(1)(c)

²⁷ Department of Climate Change, Energy, the Environment and Water, [Environment Protection Reforms: Setting up for Success Consultation Paper 3: Reducing Duplication](#), May 2026, s2.3 Applying the Standards

²⁸ *Environment Protection Reform Act 2025* (Cth), new EPBC Act ss 29 and 46(1)

This means that even if an accredited framework is approved to assess and decide on other protected matters, if a relevant unconventional gas or large coal mining project triggers the water trigger, that part of the action will still require approval under the EPBC Act by the federal government.

Cancellation or suspension of a bilateral agreement where non-compliance

The Minister may give notice to cancel or suspend a bilateral agreement, after consultation with the state or territory Minister, where the state or territory government has:

- (a) not complied with the agreement, or
- (b) has not given effect to the agreement in a way that has regard to the objects of the Act or Australia's obligations under any international agreement, or
- (c) has given effect to the agreement in any way that is inconsistent with any national environmental standard, or
- (d) has given effect to the agreement in a way that has resulted in or will result in an unacceptable impact on a protected matter, or
- (e) has given effect to the agreement in a way that has resulted in or is likely to result in approval of actions that would not pass the net gain test for residual significant impacts.²⁹

The reforms require the CEO of NEPA to review a bilateral agreement within 3 years of commencing, and the Minister must publish a copy of the report of the review on the Department's website.³⁰ The CEO may also from time to time ask an authorised officer to conduct an assurance review of a bilateral agreement. This may include a review of whether the conditions continue to be met in relation to the management or authorisation framework, whether conditions continue to be met in relation to the manner of assessment, and whether the state or territory is complying with the bilateral agreement.³¹

Status of assessment bilateral agreements across Australia prior to the 2025 EPBC reforms

All states and territories have entered into *assessment* bilateral agreements with the Commonwealth since around 2014-2015, though their operation and continued affect differ depending on local legislation and later amendments.³² These agreements may no longer be functioning in full due to amendments, and may be about to change.

You can keep track of the processes for introducing new bilateral agreements on the DCCEEW website here: <https://www.dcceew.gov.au/environment/epbc/approvals/state-assessments>

²⁹ *Environment Protection Reform Act 2025* (Cth), new EPBC Act ss 58(2) and 59(1)

³⁰ *Environment Protection Reform Act 2025* (Cth), new EPBC Act s 65C

³¹ *Environment Protection Reform Act 2025* (Cth), new EPBC Act ss 65D(1) and 65D(2)

³² See <https://www.dcceew.gov.au/environment/epbc/approvals/state-assessments>.

NSW

Visit: The [NSW Amending Agreement No. 1](#) to view the full text of bilateral agreement arrangements

Queensland

Visit: Queensland's [Amending Agreement No. 5](#) to view the full text of bilateral arrangements

South Australia

Visit: [South Australia Assessment Bilateral Agreement](#) to view the full text of bilateral arrangements

Northern Territory

Visit: [NT Assessment Bilateral Agreement](#) to view the full text of bilateral arrangements

Tasmania

Visit: [Tasmanian Assessment Bilateral Agreement](#) to view the full text of bilateral arrangements

Victoria

Visit: [Victorian Assessment Bilateral Agreement](#) to view the full text of bilateral arrangements

Western Australia

Visit: [Western Australian Assessment Bilateral Agreement](#) to view the full text of bilateral arrangements and the [Intention to develop a draft bilateral agreement with WA](#)

Australian Capital Territory

Visit: [ACT Planning – Environment, Planning and Sustainable Development Directorate](#) to see current planning legislation processes

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