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Guide: Process for finalising the WA Bilateral Agreement

On 21 April 2026, the Commonwealth and Western Australia announced a [memorandum of understanding \(MoU\)](#) in relation to a “bilateral agreement” for assessment and approval processes under environmental laws. This guide sets out what these agreements are, and the steps involved in finalising the WA bilateral assessment agreement – including how you can participate in the process.

For more information on bilateral agreements, see our Explainer [here](#).

What is a bilateral agreement?

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) is Australia’s main federal environment law. It requires assessment and approval for projects that may impact matters of national environmental significance (such as internationally significant wetlands, threatened species, or places on the World Heritage List). Under state laws, like the *Environmental Protection Act 1986* (WA), projects that may impact the WA environment also require assessment and approval.

A bilateral agreement is a written deal between the Commonwealth and a state or territory which aims to streamline these legal requirements so that only one level of government undertakes the process under the EPBC Act. There are two types of bilateral agreement under the EPBC Act:

- **Assessment** bilateral (where the state handles assessment, but approvals continue to be undertaken by the federal government);
- **Approval** bilateral (where an approval from the state government would count as approval under the federal EPBC Act as well).

Steps from MoU to a finalised bilateral agreement on assessment

The MoU between WA and the Commonwealth sets out an intent to finalise an assessment bilateral by December 2026, with work then commencing immediately on an approval bilateral. These are the steps in finalising the assessment bilateral.

The process is similar for entering an approval bilateral, however it’s necessary that an assessment bilateral is in place prior to an approval bilateral.

Step 1: Public notice of intention to develop an agreement

- The Commonwealth Minister for the Environment (**Minister**) publishes a notice as soon as practicable once the Commonwealth has begun developing a draft agreement with WA.¹

Step 2: Drafting and negotiation between the Commonwealth and WA

- The Commonwealth and WA prepare a draft agreement.
- The agreement sets out the state environmental protection processes which are proposed to take the place of separate Commonwealth assessment,² and how those assessment approaches correspond to the assessment approaches in the EPBC Act.³ The EPBC Act also sets out some mandatory provisions and scope limits for an agreement.⁴

Step 3: Public consultation on the draft

- The Minister is required to publish the draft agreement for comments for at least 28 days.⁵
- Anyone can make a comment. **This is the only formal opportunity for public comments in the process of setting up a bilateral agreement.**

Step 4: Minister considers legal criteria and comments

- The Minister must take public comments from the consultation period into account.⁶
- The Minister must be satisfied that the proposed state assessment will include assessment of the relevant impacts that are the subject of the EPBC Act.⁷
- The EPBC Act sets out other specific criteria that have to be met before the Minister can finalise a bilateral agreement.⁸ There are many criteria – for more information see our [Explainer](#).⁹

Step 5: Minister signs the bilateral agreement

- If all the required considerations have been completed and the WA framework meets the criteria in the EPBC Act, the Minister can enter into the bilateral agreement with WA.¹⁰
- Actions that the agreement applies to must then be assessed under the agreement framework (instead of the other EPBC Act assessment approaches).

Step 6: Publication of the final agreement

- As soon as practicable after signing a bilateral agreement, the Minister must publish:
 - the agreement itself;
 - a statement of reasons for entering into it; and
 - a report on the comments received during consultation.¹¹

¹ EPBC Act s 45(3).

² EPBC Act ss 45(1)-(2), 47, 48.

³ EPBC Regulations, reg 3.02.

⁴ EPBC Act ss 48A, 49.

⁵ EPBC Act s 49A.

⁶ EPBC Act s 49A(b). The Minister must also consider the role and interests of Indigenous peoples in conserving and using natural resources sustainably: EPBC Act s 49A(c).

⁷ EPBC Act s 47(2).

⁸ EPBC Act, Part 5, Div 2, Subdiv B.

⁹ EPBC Act s 51.

¹⁰ EPBC Act s 45(1).

¹¹ EPBC Act s 45(4).