



Government of **Western Australia**
Department of **Water and Environmental Regulation**

Bilateral Agreements Regulations

Consultation summary report

Department of Water and Environmental Regulation

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Executive summary

The *Environmental Protection Amendment Act 2020* is the most significant reform of Western Australia's environmental legislation in more than 30 years. It introduces a raft of amendments to Western Australia's primary environmental legislation – the *Environmental Protection Act 1986* (EP Act).

The amendments will be introduced in three main stages. For more information go to: www.wa.gov.au/service/environment/business-and-community-assistance/amendments-the-environmental-protection-act-1986.

Proclamation of amendments under the second stage occurred on [22 October 2021](#). These amendments introduce Part VIIIA Bilateral Agreements with the Commonwealth to ensure that the State can fully implement bilateral agreements.

A bilateral agreement provides streamlining by removing duplication between State and Commonwealth environmental assessment and approval processes, while maintaining high environmental standards.

Western Australia has an existing (2014) assessment bilateral agreement with the Commonwealth under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Part VIIIA provides for a person to apply for a matter to be considered a 'bilateral matter'. In broad terms, this is a process for a person who is potentially covered by a bilateral agreement to opt in to being dealt with under that bilateral agreement.

The [Environmental Protection \(Bilateral Agreements\) Regulations 2021](#) (Bilateral Agreements Regulations) were also gazetted on 22 October 2021. These set out procedures for how and when a person may apply for a matter to be dealt as a 'bilateral matter' under a bilateral agreement.

To inform the development of the regulations, the Department of Water and Environmental Regulation (the department) released the [draft Environmental Protection \(Bilateral Agreements\) Regulations 2021](#) for public comment. An [explanatory note](#) was published alongside the draft regulations to guide readers through the meaning of the regulations and how they would apply.

Eight submissions were received during the three-week comment period from 24 August to 14 September 2021. Most respondents supported the regulations.

One stakeholder considered that the regulations should provide more detail. Some stakeholders raised concerns in relation to matters outside the scope of the regulations.

This report provides the department's response to the feedback received, which has helped inform the final Bilateral Agreements Regulations.

The department thanks all respondents to this consultation process.

General comments

Stakeholders generally supported the regulations.

One respondent expressed the view that the regulations were brief and missing important details. The respondent considered that the legal status of a bilateral matter once an application has been processed is unclear, and queried the level of transparency in the proposed process. The respondent also expressed concern that the regulations pre-empt the passage of proposed amendments to the EPBC Act relating to approvals bilateral agreements and associated national environmental standards.

Response:

The purpose of the Bilateral Agreements Regulations is to set out procedures for how and when a person may apply for a matter to be dealt with as a 'bilateral matter' under a bilateral agreement.

Further detail required in an application for a matter to be dealt with as a 'bilateral matter' under the EP Act will be contained in the approved form. The information requirements will depend on the scope and requirements of a bilateral agreement, so it is not practical to specify this information in the Bilateral Agreements Regulations.

Once an application has been made in accordance with the regulations, State entities will be authorised to perform their functions under the EP Act in respect of the 'bilateral matter' in a manner that is consistent with, and enables the implementation of, the relevant bilateral agreement.

These regulations are required so that Part VIIIA of the EP Act can operate fully, including in relation to the existing (2014) assessment bilateral agreement between the State and Commonwealth. The amendments to the EP Act and these regulations are separate to, and in no way pre-empt the passage of the proposed EPBC Act amendments.

Late applications to have matter dealt with as bilateral matter

One respondent recommended that the provision which enables the acceptance of late bilateral applications is not clear or objective, and should be more prescriptive so that it is clearer when a late application will or will not be accepted. The respondent considered that relevant State entities should be required to publish reasons for decisions to accept late applications.

Response:

There are a range of scenarios which may result in the need for a person to submit a late application for a matter to be considered a 'bilateral matter' under the EP Act. The Bilateral Agreements Regulations provide flexibility for the relevant State entity to accept a late application where it is considered appropriate to do so.

The regulations require the relevant State entity to have regard to the extent to which they have performed their functions under the EP Act in determining whether to accept a late application.

The publication of reasons for decisions to accept late applications is not consistent with the requirements for other similar decisions under the EP Act.

Requirements for bilateral application

One respondent considered that more detailed requirements as to the content of a bilateral matter application should be specified in the regulations, rather than leaving this to be specified in an approved form.

Response:

The detail required in an application for a matter to be dealt with as a 'bilateral matter' under the EP Act will be contained in the approved form.

It is not practical to specify this information in the Bilateral Agreements Regulations, as the information requirements in the application may vary depending on the scope and requirements of a bilateral agreement.

Out of scope

One respondent expressed concern regarding the potential devolution of Commonwealth approval powers under the EPBC Act to states and territories; and the potential for the State to enter into an approval bilateral agreement with the Commonwealth.

Another respondent expressed concern regarding operability of the existing (2014) assessment bilateral agreement, and the need to minimise duplication between State and Commonwealth processes and requirements.

Response:

These matters are out of the scope of the Bilateral Agreements Regulations.

Appendix A - Submissions received

Eight submissions were received during the consultation period.

No.	Organisation
1	Australian Petroleum Production & Exploration Association
2	Association of Mining and Exploration Companies
3	The Chamber of Minerals and Energy WA
4	Department of Transport and the Public Transport Authority
5	Environmental Defender's Office
6	Kimberley Pilbara Cattlemen's Association
7	Main Roads WA
8	Western Australian Local Government Association