

## Report on Public Comments on the Draft Queensland Assessment Bilateral Agreement

As required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**), a draft assessment bilateral agreement between the Commonwealth and the State of Queensland was published on 24 October 2014 with an invitation for any person to comment by 21 November 2014.

This report provides a summary of issues raised in submissions that were received on the draft agreement. 17 submissions were received within the statutory consultation period. These submissions have been published in full on the Australian Government Department of the Environment's website, except where the author has marked the submission, or parts of the submission, as confidential. A list of submitters is provided at **Appendix A**. Submission 12 has not been published as this submission contains information which is considered confidential by the author.

Some submissions support the inclusion of the new Impact Assessment Report process as an alternative assessment pathway, where projects do not require an Environmental Impact Statement assessment. These submissions note that further expansion of the bilateral agreement would ensure more projects benefit from a streamlined assessment process.

Some submissions provided comments that are out of scope for the public consultation process on the draft agreement. These comments primarily relate to merits of the Australian Government's One-Stop Shop policy. While these comments have been recorded and considered more broadly by the Australian Government in relation to the One-Stop Shop policy, they have not been addressed in this report.

### 1. Judicial Review

Some submissions suggested that the Commonwealth Environment Minister should not accredit the new Impact Assessment Report process unless Queensland removes the prohibition on statutory judicial review of the Coordinator-General's decisions under the *State Development and Public Works Organisation Act 1971 (Qld)* (SDPWO Act) (including the assessment approach decision).

#### *Government response*

The Commonwealth Environment Minister is the decision maker for projects assessed under an assessment bilateral agreement. The provisions of the EPBC Act and the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* that relate to standing and access to judicial review apply to actions assessed under the assessment bilateral agreement.

### 2. Assessment approach decision

Some submitters were concerned with the lack of a requirement for the Coordinator-General to specifically consider Matters of National Environmental Significance (Matters of NES) in choosing to assess a project by Impact Assessment Report, and the lack of requirement for an Impact Assessment Report to contain detailed

consideration of impacts on Matters of NES, calling this a significant step-down from the protections afforded under current assessment requirements.

Submitters also suggested that the Commonwealth Environment Minister should retain greater powers of oversight over the assessment approach decision than simply the ability to request additional guidelines for an Impact Assessment Report (i.e. the Commonwealth Environment Minister should retain the power to require an Environmental Impact Statement instead of an Impact Assessment Report).

*Government response*

Under Part 4 of the SDPWO Act, the Queensland Coordinator-General may choose between assessment approaches. The assessment approaches available to the Coordinator-General are:

- Assessment by Impact Assessment Report This is similar to an assessment by Preliminary Documentation under the EPBC Act. The Impact Assessment Report process gives greater flexibility in selecting an appropriate assessment method for lower complexity projects; and
- Environmental Impact Statement. This is similar to an assessment by Environmental Impact Statement under the EPBC Act.

Clause 17.4 of the Draft Bilateral Agreement states that if the Coordinator-General proposes to undertake an assessment by Impact Assessment Report, Queensland must give the Commonwealth Environment Minister an opportunity to ask that another assessment approach be used. If the Commonwealth Environment Minister makes such a request, the Impact Assessment Report process must include additional steps (outlined in Class 2 under Schedule 1 to the Draft Bilateral Agreement), which will make the process equivalent to an Environmental Impact Statement under the EPBC Act.

**3. Terms of reference**

Some submitters suggested that the absence of Terms of Reference for an Impact Assessment Report, and the Coordinator-General's discretion whether to publicly notify the draft Terms of Reference for an Environmental Impact Statement will significantly restrict the public's involvement in the assessment process.

*Government response*

The Impact Assessment Report process gives greater flexibility in selecting an appropriate assessment method for lower complexity projects, and this is reflected in the information requirements under the process.

Where an Impact Assessment Report is required for a project and the Commonwealth Environment Minister has not requested a different level of assessment, the Impact Assessment Report must include the information set out in section 34G of the SDPWO Act. When undertaken in accordance with the additional requirements set out in Schedule 1 of the agreement, this process will ensure that the Impact

Assessment Report includes an adequate assessment of the relevant impacts of the action on Matters of NES.

Where the Commonwealth Environment Minister has made a request pursuant to clause 17.4 of the agreement that another assessment approach be used, the Coordinator-General must issue the proponent written guidelines for the preparation of an Impact Assessment Report that are designed to ensure that the Impact Assessment Report assesses all relevant impacts on Matters of NES.

Schedule 1 of the agreement states that the Coordinator-General must ensure that, if appropriate, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Environment Minister, the draft terms of reference for an Environmental Impact Statement are made available to the public and released for public comment.

#### **4. Public comments**

The new requirement for a proponent to produce a revised Impact Assessment Report or Environmental Impact Statement in response to public comments will make it more difficult for the public to understand whether and how public comment has been taken into account. Under the previous agreement a proponent was required to produce a stand-alone supplementary report.

##### *Government response*

The new agreement has been amended at Item 5.1 of Schedule 1 (Class 2) to reflect requirements in the EPBC Regulations (Schedule 1, Item 5.02) that assessment documentation consider and summarise, or take into account, the issues raised by the public during the public comment period.

**LIST OF SUBMITTERS**

17 submissions were received on the draft Queensland approval bilateral agreement within the statutory consultation period. These submissions have been published on the Department of the Environment website. Submission 12 will not be published as this submission contains information which is considered private and confidential by the author.

1. Queensland Resources Council
2. Port of Brisbane Pty Ltd
3. Stop the Gold Coast Quarry Association Inc
4. Gecko – Gold Coast and Hinterland Environment Council Assn Inc
5. Places You Love Alliance
6. North Queensland Conservation Council
7. Renate Hottmann-Schaefer
8. Queensland Conservation
9. Ross Aitken-Smith
10. Cairns and Far North Environment Centre
11. Leslie Shirreffs
12. World Wildlife Fund Australia
13. Ceris Ash
14. Wildlife Preservation Society of Qld
15. National Parks Association of Queensland Inc
16. Leigh Johnstone
17. Australian Network of Environmental Defender's Offices