

**AN AGREEMENT BETWEEN THE AUSTRALIAN
GOVERNMENT AND THE STATE OF QUEENSLAND**

**UNDER SECTION 45 OF THE AUSTRALIAN
GOVERNMENT *ENVIRONMENT PROTECTION AND
BIODIVERSITY CONSERVATION ACT 1999***

RELATING TO ENVIRONMENTAL ASSESSMENT

Aim

1. The agreement aims to minimise duplication of environmental assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation. In particular, this agreement provides for the accreditation of the Queensland environmental assessment processes (set out in Schedule 1) to ensure an integrated and coordinated approach for actions requiring approval from both the Australian Government (under the Australian Government *Environment Protection and Biodiversity Conservation Act 1999*) and the State of Queensland. This agreement will therefore enable the Australian Government to rely primarily on the Queensland assessment processes set out in Schedule 1 in assessing actions under the *Environment Protection and Biodiversity Conservation Act 1999*.
2. The specific objects of this agreement are to:
 - (a) protect the environment;
 - (b) promote the conservation and ecologically sustainable use of natural resources;
 - (c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and
 - (d) minimise duplication in the environmental assessment through accreditation of Queensland processes by the Australian Government.

Parties to the agreement

3. The parties to this agreement are the State of Queensland and the Australian Government.

Term of agreement

4. This agreement except for actions in Class 1 of Schedule 1, commences upon signature. This agreement will commence in relation to actions specified in Class 1 of Schedule 1 on the date specified in a notice given by Queensland to the Australian Government being a date not earlier than:
 - (a) the date on which the provisions of the *Integrated Planning and other Legislation Amendment Act 2001* referred to in subsection 2(2) of that Act commences; or
 - (b) the date of the coming into force of amendments to the *Integrated Planning Regulation 1998* in substantially similar terms to the proposed amendments set out in the proposed regulations dated 13 June 2002 (Version 4);

whichever is the latest.

5. The agreement will expire on five years after commencement.

Nature of the agreement

- 6 This agreement is a bilateral agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999*.
- 7 The parties note that assessment means assessment of the relevant impacts within the meaning of section 82 of the *Environment Protection and Biodiversity Conservation Act 1999*. Parties also note the commitments in clause 10 by the State of Queensland in relation to assessing impacts other than the relevant impact.
- 8 The parties do not intend this agreement to create contractual or other legal obligations between the parties, or that a breach of the agreement will give rise to any cause of action, or right to take legal proceedings, other than as provided for in the *Environment Protection and Biodiversity Conservation Act 1999*.

Effect of this agreement

9. Certain actions in a class of actions do not require assessment under the *Environment Protection and Biodiversity Conservation Act 1999*
- 9.1 Pursuant to subsection 47(1) of the *Environment Protection and Biodiversity Conservation Act 1999*, it is declared that an action in any of the classes of actions specified in Schedule 1 does not require assessment under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999*.
- 9.2 Clause 9.1 applies to actions which are taken wholly within the State of Queensland including its coastal waters. In relation to actions taken in more than one jurisdiction (including Queensland), or which are taken in Queensland but have relevant impacts in other jurisdictions, the parties agree to consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as that set out in Schedule 1 or specified in an agreed instrument.
- 9.3 Consistent with section 49 of the *Environment Protection and Biodiversity Conservation Act 1999*, the parties note that the provisions of this bilateral agreement do not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency.
- 10 Queensland to ensure that impacts on matters that are not of national environmental significance are assessed
- 10.1 This clause applies to an action that:
- (a) is a controlled action (as determined by the Federal Environment Minister) taken or proposed to be taken in Queensland;
 - (b) does not require assessment under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999* if an assessment is conducted in accordance with Schedule 1 of this agreement; and
 - (c) is an action:
 - (i) taken or proposed to be taken by a constitutional corporation; or

- (ii) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and a Territory, or between two Territories; or
 - (iii) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- 10.2 The Australian Government undertakes that the written notice referred to in clause 11.2 will indicate:
 - (a) whether the Australian Government believes that the action covered by the notice is an action to which this clause applies; and
 - (b) if so, which of paragraphs (i)-(iii) in clause 10.1(c) applies to the action.
- 10.3 The State of Queensland undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.
- 10.4 The State of Queensland notes that the Federal Environment Minister cannot decide whether to approve an action covered by section 130(1C) until a written notice described in section 130(1B) of the *Environment Protection and Biodiversity Conservation Act 1999* has been received from the State. The written notice must state that the impacts referred to in clause 10.3 have been assessed to the greatest extent practicable and explain how they have been assessed. The State of Queensland undertakes to use its best endeavours to provide such a written notice in relation to actions covered by section 130(1C).
- 10.5 The parties agree that 'greatest extent practicable' in clauses 10.3 and 10.4 is satisfied where the assessment has been undertaken in a specified manner of assessment in Schedule 1.

Procedures to be followed

- 11. Australian Government to inform Queensland of decision about whether an action is a controlled action
 - 11.1 This clause applies to an action that is:
 - (a) subject of a proposal referred to the Federal Environment Minister under the *Environment Protection and Biodiversity Conservation Act 1999*; and
 - (b) taking place in Queensland.
 - 11.2 The Queensland Minister will be given written notice of the decision, within ten business days of the decision being made, for every decision by the Federal Environment Minister that an action proposed to be taken in Queensland is a controlled action.
- 12. Indication by Queensland that an accredited process will apply
 - 12.1 This clause applies where:
 - (a) the State of Queensland receives a written notice from the Federal Environment Minister that an action proposed to take place in Queensland is a controlled action; and

- (b) the action does not require assessment under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999* if assessed in the manner specified in Schedule 1 to this agreement.

12.2 The State of Queensland will provide written notice as soon as practicable to the Federal Environment Minister whether the action is in a class of actions covered by this bilateral agreement in accordance with the administrative arrangements.

13. Assessment reporting

13.1 The State of Queensland undertakes that when an action is assessed in the manner specified in Schedule 1 of this agreement it will:

- (a) provide a copy of the Assessment Report or part thereof, to the extent it addresses the relevant impacts of a controlled action, to the Federal Environment Minister on the date on which the Report is given to the proponent under section 35 of the *State Development and Public Works Organisation Act 1971*, section 57 of the *Environmental Protection Act 1994* and section 5.7A.13 of the *Integrated Planning Act 1997*; and
- (b) provide copies of the information about the relevant impacts of the action within the meaning of section 82 of the *Environment Protection and Biodiversity Conservation Act 1999* to the Federal Environment Minister as soon as reasonably practicable (and in any event not more than ten business days) after the date on which the Assessment Report is provided to the Minister.

13.2 The State of Queensland may, when it provides the Assessment Report or part thereof to the extent it addresses the relevant impacts of a controlled action or the other information referred to in clause 13.1, also provide additional information on social and economic matters (only where the provision of this information does not breach privacy or commercial in confidence information requirements) if such information will be relevant to the Federal Environment Minister's decision whether to approve the action under section 136 of the *Environment Protection and Biodiversity Conservation Act 1999*.

14. Additional information

If, in deciding whether to approve the taking of an action assessed under this agreement, the Federal Environment Minister uses any information described in sub-section 136(2)(e) of the *Environment Protection and Biodiversity Conservation Act 1999*, the Federal Environment Minister undertakes to provide a copy of this information to the Queensland Minister. The intention of this clause is to give the State of Queensland an opportunity to comment on the accuracy of this information before the Federal Environment Minister decides whether or not to approve the taking of the action, subject to the requirements of section 130 of the *Environment Protection and Biodiversity Conservation Act 1999* relating to the time period within which the Federal Environment Minister must decide whether to approve the action.

15. Monitoring compliance with conditions

15.1 This clause applies where an action:

- (a) is taken in Queensland;
- (b) requires the approval of the Federal Environment Minister under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999*, and
- (c) requires approval (however described) under Queensland legislation.

15.2 The parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication. To this end the parties agree:

- (a) that each party will inform the other of any conditions attached to the approval(s) to take the action; and
- (b) that best endeavours will be used to put complementary arrangements in place for monitoring compliance with conditions on any action which is approved by both parties subject to the existing systems and legal requirements of the parties. The aim of these arrangements is to ensure that reporting and compliance activities, including site inspections, are coordinated as far as possible.

16. Enforcing conditions on approvals

The parties agree to inform one another, as soon as practicable, of any action to prosecute a person for breaching conditions of an approval for an action which has been approved by both parties, where the conditions relate to, or affect, a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*.

17. Conditions attached to an approval

The parties recognise the desirability of avoiding, to the extent practicable, attaching inconsistent conditions to approvals for an action under the *Environment Protection and Biodiversity Conservation Act 1999* and Queensland legislation. To this end, the parties:

- (a) agree where practicable to consult on the conditions to be attached to approvals granted by either party;
- (b) note the provisions of section 134 of the *Environment Protection and Biodiversity Conservation Act 1999*, which include a requirement for the Federal Environment Minister to consider any relevant State conditions when deciding whether to attach a condition to an approval; and
- (c) agree to inform one another wherever practicable before varying the conditions attached to an approval for an action which has been approved by both parties, where the condition relates to, or affects, a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*. The parties also agree to advise one another of any such variation after it has been made.

18. Administrative procedures

The parties agree to jointly develop administrative procedures to ensure that the requirements of this agreement are administered efficiently in accordance with their separate legal requirements. Where possible the parties will develop arrangements which will allow proponents to simultaneously satisfy both Australian Government and State referral requirements.

Maintaining the agreement

19. Monitoring compliance with the agreement

The parties recognise that, under the Australian Government *Auditor-General Act 1997*, the Australian Government Auditor-General may audit the operation of the Australian Government public sector (as defined in section 18 of that Act) in relation to this agreement.

20. Cancelling or suspending the agreement

20.1 The parties note that under sections 57 – 64 of the *Environment Protection and Biodiversity Conservation Act 1999* the Federal Environment Minister may cancel or suspend all or part of this agreement (either generally or in relation to actions in a specified class) under certain circumstances.

20.2 The Federal Environment Minister must cancel or suspend all or part of this agreement at the request of the Queensland Minister if:

- (a) the request is made on the grounds that the Queensland Minister is not satisfied that the Australian Government has complied or will comply with the agreement; or
- (b) the request is made on the grounds that the Queensland Minister is not satisfied that the object of the agreement is being achieved; and
- (c) before making the request, the Queensland Minister has informed the Federal Environment Minister in writing of the reason(s) for requesting the suspension and allowed a period of at least twenty business days for the Federal Environment Minister to respond.

Exchange of information

21. Each party agrees to promptly comply with any reasonable request from the other party to supply information relating to the management or administration of assessments covered by this agreement.

22. Subject to permission of the owner to use and communicate the information, and subject to confidentiality requirements as determined by the party providing the data, the parties agree to make available to each other any appropriate and relevant data in order for the parties to meet their respective responsibilities relating to the bilateral agreement and assessment of relevant impacts pursuant to the relevant Act. The parties agree that data will remain the property of the owner and its use will be subject to such licence conditions as may be agreed. The parties agree that data will not be used or communicated to any other person without the permission of the owner.

Conflict resolution

23. In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance.

24. The parties will notify and consult each other on matters that come to their attention that may improve the operation of this agreement.

Relevant plans and agreements

25. When preparing assessment reports on relevant impacts in a manner specified in Schedule 1 to this agreement, the State of Queensland agrees to take into account relevant agreements and plans. The parties agree that where the assessment process covers impacts on:
- a) World Heritage values of a World Heritage property, any management plan for the property is relevant;
 - b) National Heritage values of a National Heritage place, any management plan for the property is relevant;
 - c) the ecological character of a Ramsar wetland property, any management plan for the wetland is relevant;
 - d) a listed threatened species or ecological community, any recovery plan for the species or community, and any threat abatement plan for a process that threatens the species or community is relevant; and
 - e) a listed migratory species, any wildlife conservation plan for the species is relevant.

Freedom of information legislation

26. Subject to State and Australian Government legislation, if either party receives any request from a third party, including under Freedom of Information legislation, for any documents originating from the other party which are not otherwise publicly available, the parties will consult on the release of those documents.
27. The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met without delay.

Public Access to Assessment Documentation

28. The State of Queensland agrees that documentation about each assessment made under the manner specified in Schedule 1 will be available to the public in accordance with the relevant laws of the State of Queensland, except where corresponding information would not have been available to the public if the action had been assessed by the Australian Government under the *Environment Protection and Biodiversity Conservation Act 1999*.

Groups with particular communication needs

29. The State of Queensland or authorised decision-making body will, in giving effect to the requirements in Schedule 1, require proponents within the State's capacity to do so, to make special arrangements, if appropriate, to ensure that affected groups with particular communication needs have adequate opportunity to comment on actions assessed in the manner specified in

Schedule 1. The parties note that indigenous people affected by a proposed action may have particular communication needs, and will ensure, where appropriate, that affected indigenous people have adequate opportunity to comment on actions assessed in the manner specified in Schedule 1 and in accordance with Queensland Indigenous consultation and engagement protocols set out in *Protocols for consultation and negotiation with Aboriginal people* and *Min Mir Lo Ailan Mun: Proper Communication with Torres Strait Islander people*.

Funding

30. The parties agree that, twelve months after the commencement of this agreement, and every twelve months thereafter until the expiry of this agreement, they will review the additional implementation costs that Queensland may have incurred during the relevant twelve month period of the agreement. The Australian Government agrees to reimburse Queensland the additional implementation costs.
31. In clause 30, the additional implementation costs are the costs that the Australian Government and Queensland agree:
 - a) have been incurred by Queensland in implementing this agreement; and
 - b) would not, in the absence of this agreement, have been incurred by Queensland in carrying out an adequate assessment of each action to which Schedule 1 applies.

Interpretation

32. A reference in this agreement to the *Environment Protection and Biodiversity Conservation Act 1999*, the *Queensland State Development and Public Works Organisation Act 1971* or the *Queensland Environmental Protection Act 1994* is a reference to the relevant Acts as in force at the date of this agreement. A reference in this agreement to the *Integrated Planning Act 1997* is a reference to that Act as in force immediately before the commencement of this agreement for actions specified in Class 1 of Schedule 1. If any of the Acts are subsequently amended in a manner that affects the operation of this agreement, then the parties will as soon as practicable consult on whether it is necessary to make another bilateral agreement varying or replacing this agreement. Note that the relevant provisions of the *Queensland Integrated Planning Act 1997* (new part 7A in Chapter 5) will commence on a date to be fixed by proclamation.
33. A reference in this agreement to an Act includes a reference to any regulations and instruments under that Act.
34. Unless the contrary intention appears, the terms used in this agreement have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

35. **Assessment Report** means the report prepared by the Coordinator-General under sub-section 35(3) of the *State Development and Public Works Organisation Act 1971*, or by the Chief Executive under section 57 of the *Environmental Protection Act 1994*, or by the Chief Executive under section 5.7A.10 of the *Integrated Planning Act 1997* (as the case may be) to the extent it addresses the relevant impacts of a controlled action assessed in the manner specified in Schedule 1.
36. **Chief Executive** in Schedule 1, Class 3, has the same meaning as in the *Environmental Protection Act 1994*.
37. **Chief Executive** in Schedule 1, Class 1, has the same meaning as in the *Integrated Planning Act 1997*.
38. **Federal Environment Minister** means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* or a delegate of the Minister.
39. **Coordinator-General** has the same meaning as in the *State Development and Public Works Organisation Act 1971*.
40. **Queensland Minister** means the Queensland Minister for Environment.

Signed for and on behalf of the
Queensland Government by:

Signed for and on behalf of the
Australian Government by:

Hon John Mickel, MP

Senator, the Hon Ian Campbell

Minister for Environment

Minister for the Environment and
Heritage

Date:

Date:

Schedule 1

Preamble

Sub-section 47(1) of the *Environment Protection and Biodiversity Conservation Act 1999* provides that a bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8 of that Act.

Clause 9.1 of this agreement declares that an action in any of the classes of actions specified in this Schedule does not require assessment under Part 8 of the *Environment Protection and Biodiversity Conservation Act 1999*.

1. Classes of actions to which clause 9.1 applies

1.1 For clause 9.1 of this agreement, the classes of actions are:

Class 1: actions assessed under Chapter 5, Part 7A of the *Queensland Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998* and have been assessed in the manner specified in Item 2 of this Schedule;

Class 2: projects that are assessed under Part 4 of the *Queensland State Development and Public Works Organisation Act 1971* and the *State Development and Public Works Organisation Regulation 1999* and have been assessed in the manner specified in Item 2 of this Schedule; and

Class 3: actions that are assessed under Part 1 of Chapter 3 of the *Queensland Environmental Protection Act 1994* and the *Environmental Protection Regulation 1998* and have been assessed in the manner specified in Item 2 of this Schedule.

For the purposes of regulations made under section 50 of the *Environment Protection and Biodiversity Conservation Act 1999*, the manner of assessment specified in this Schedule under Class 1, 2 or 3 corresponds to assessment by environmental impact statement and meets the requirements of a public environment report under the *Environment Protection and Biodiversity Conservation Act 1999*.

2. The Specified Manner of Assessment

For the purposes of item 1 of this Schedule, the specified manner of assessment is as follows.

Class 1 - Assessment under Chapter 5, Part 7A of the Queensland *Integrated Planning Act 1997* and *Integrated Planning Regulation 1998*

This part of the Schedule will commence on the date specified in a notice given by Queensland to the Australian Government as being the date of the coming into operation of the amendments to the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998* necessary to provide for the powers, duties and functions of that Act to be used to implement this agreement.

1. Law under which the assessment has been carried out

1.1 The assessment is carried out under Chapter 5, Part 7A of the *Integrated Planning Act 1997* and the *Integrated Planning Regulation 1998*.

2. The assessment approach

2.1 This assessment process is to be used where the proposed action:

- (a) is an action that is, or is proposed to be, the subject of a development application or is community infrastructure intended to be carried out on land proposed to be designated for the infrastructure under the *Integrated Planning Act 1997*;
- (b) is not declared by the Coordinator-General to be a 'significant project' for the purposes of section 26 of the *Queensland State Development and Public Works Organisation Act 1971* in circumstances prescribed by the *Integrated Planning Regulation*; and
- (c) is not carried out under Part 1 of Chapter 3 of the *Environmental Protection Act 1994* and Part 1A of the *Environmental Protection Regulation 1998*.

3. Guidelines for assessment

- 3.1 A proponent for an action covered by the *Integrated Planning Regulation* under s5.7A.1, must apply to the Chief Executive for terms of reference for an EIS for a development. In accordance with sections 5.7A.4 or 5.7A.5 of the *Integrated Planning Act 1997*, the Chief Executive must prepare terms of reference that allow the purposes of the EIS to be achieved for the development. In accordance with the *Integrated Planning Regulation*, the terms of reference are designed to ensure that the assessment:
- (a) assesses all the relevant impacts of the action; and
 - (b) provides enough information about the action and its relevant impacts to allow the Federal Environment Minister to make an informed decision whether to approve the action; and
 - (c) addresses the matters mentioned in Division 5.2 of the *Environment Protection and Biodiversity Conservation Regulations 2000* for an environmental impact statement.

4. Assessment reports

- 4.1 The assessment report must provide enough information about the action and its relevant impacts to allow the Federal Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Class 2 - Assessment under Part 4 of the *Queensland State Development and Public Works Organisation Act 1971* and the *State Development and Public Works Organisation Regulation 1999*

1. Law under which the assessment has been carried out

- 1.1 The assessment is carried out under Part 4 of the *State Development and Public Works Organisation Act 1971* and the *State Development and Public Works Organisation Regulation 1999*.

2. The assessment approach

- 2.1 This assessment process is used where the Coordinator-General declares, for the purposes of section 26 of the *State Development and Public Works Organisation Act 1971*, that the proposed action is a significant project for which an environmental impact statement (EIS) is required.

3. Guidelines for assessment

- 3.1 In preparing the terms of reference, the Coordinator-General must ensure that the EIS will meet the requirement of sub-section 16(1) of the *State Development*

and *Public Works Organisation Regulation 1999* and are designed to ensure that the EIS:

- (a) assesses all relevant impacts that the action has, will have or is likely to have;
- (b) provides enough information about the action and its relevant impacts to allow the Federal Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (c) addresses the matters mentioned in Division 5.2 of the *Environment Protection and Biodiversity Conservation Regulations 2000* for an environmental impact statement.

4. Responding to Public Submissions

- 4.1 The proponent prepares a revised version of the draft statement or the draft statement and a supplement to the draft statement.

5 Assessment reports

- 5.1 The assessment report must provide enough information about the action and its relevant impacts to allow the Federal Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Class 3 - Preparation of an Environmental Impact Statement under Part 1 of Chapter 3 of the Queensland *Environmental Protection Act 1994* and the *Environmental Protection Regulation 1998*.

1. Law under which the assessment has been carried out

- 1.1 The assessment is carried out under Part 1 of Chapter 3 of the *Environmental Protection Act 1994* and Part 1A of the *Environmental Protection Regulation 1998*.

2. The assessment approach

- 2.1 This assessment process is used where the proposed action:
 - (a) is not subject to the Integrated Development Assessment System under the *Integrated Planning Act 1997* and is subject to Chapter 3 of the *Environmental Protection Act 1994*, including:
 - (i) a mining activity for which an EIS is required under sections 164 or 165 of the *Environmental Protection Act 1994*; and
 - (ii) an action that involves an interest in land in a protected area for which an EIS is required under sections 39A and 39B of the *Nature Conservation Act 1992*; and
 - (b) is not declared by the Coordinator-General to be a 'significant project' under section 26 of the *State Development and Public Works Organisation Act 1971*.

3. Setting the public comment period

- 3.1 The Chief Executive specifies a submission period of at least 20 business days (which must end at least 20 business days after the EIS notice is published) or 28 days (specified under the *Environment Protection and Biodiversity Conservation Act 1999*) whichever is the longer. (This is the period during which a submission may be made by anyone about the EIS).

4. Assessment reports

- 4.1** The assessment report must provide enough information about the action and its relevant impacts to allow the Federal Environment Minister to make an informed decision whether or not to approve the action under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999*.