

## REPORT ON COMMENTS

As required by section 49A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the draft assessment bilateral agreement between the Commonwealth of Australia and the State of Queensland was published on 16 May 2009 with an invitation for any person to comment.

Ten submissions were received on the draft assessment bilateral agreement:

1. Petrus Heyligers
2. Sunshine Coast Environment Council Inc
3. AgForce Queensland Industrial Union of Employers
4. Conondale Range Committee
5. Coolum Residents Association
6. Powerlines Action Group Eumundi Inc
7. Mary River Catchment Coordinating Committee
8. Wide Bay Burnett Conservation Council Inc
9. Environmental Defenders Office (QLD) Inc and Environmental Defenders Office of Northern Queensland Inc (joint submission)
10. Save the Mary River Coordinating Group

### **Submissions**

**Submissions 1, 2 and 4 - 10** commented on the ability of the Queensland Government to properly assess the impacts of proposals under the bilateral agreement. Specifically, submissions 2 and 4 - 10 commented that assessments undertaken by the Queensland Government raised questions of a conflict of interest, particularly in relation to assessments where the proponent is a manifestation of the Queensland Government.

Response: The aim of the agreement is intended to reduce duplication in relation to assessment processes and does not in any way limit the parties' capacity to achieve quality environmental outcomes. Furthermore, the Commonwealth Environment Minister will retain the ultimate approval responsibility for proposals assessed under the bilateral agreement. The experience in relation to the existing bilateral agreement has shown there has been no conflict of interest associated with environmental assessments conducted by Queensland under the agreement and that these processes provide for sufficient transparency including in relation to public consultation.

**Submissions 2, 5, 6, 7 and 9** commented that the bilateral agreement did not take adequate account of amendments that have occurred to the Queensland legislation that provides for the processes accredited in the agreement, since the original agreement was entered in 2004. These comments also raised concern that that the review of the agreement should also focus on the fact that Queensland is currently considering new environment and planning legislation. Submission 9 commented that the bilateral agreement must not provide for assessment documentation to be withheld on any grounds that would not be available had the assessment occurred under Part 8 of the EPBC Act.

Response: A benchmarking process has ensured that the provisions of the Queensland legislation relating to environmental impact assessment processes continue to meet the requirements for accreditation under the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000* (the EPBC Regulations). Minor consequential amendments have been made to Schedule 1 of the agreement to take account of these changes.

The implications for the bilateral agreement presented by the possible enactment of any new legislation will be considered in due course. The review of the bilateral agreement does not represent a good juncture to consider accreditation of processes proposed under draft legislation as these processes are not expected to pass into law until after the existing bilateral agreement expires.

A minor technical amendment has been made to the bilateral agreement to clarify and to remove any doubt that public access to assessment documentation under the accredited Queensland processes will not be restricted on any grounds that would not be available had the assessment occurred under Part 8 of the EPBC Act.

**Submissions 2, 7 and 10** commented that there were deficiencies in monitoring and enforcement of actions assessed under the bilateral agreement.

Response: The bilateral agreement does not delegate the approval decision and post-approval compliance and enforcement functions for approvals under the EPBC Act to Queensland: these remain the responsibility of the Commonwealth. The Commonwealth will continue to closely monitor and enforce compliance with approval conditions, independently of the Queensland Government, in order to ensure that the objectives of the EPBC Act are achieved.

**Submissions 2, 3, 7 and 9** made comments about the wider operation of the EPBC Act, areas of potential conflict with Queensland legislation as well as deficiencies in Queensland legislation.

Response: Questions regarding the general effectiveness of the EPBC Act are much broader than the operation of the bilateral agreement between the Commonwealth and the State of Queensland. Broader EPBC Act issues are subject to consideration by an Independent Review of the Act currently being undertaken. Broader issues associated with Queensland environmental legislation are a matter for the Queensland Government.