

Thank you for providing the Wet Tropics Management Authority with an opportunity to make a submission to the independent review of the *EPBC Act*.

The Queensland and Commonwealth Governments established the Wet Tropics Management Authority (Authority) as a small, independent organisation with the responsibility of overseeing the management and protection of the Wet Tropics of Queensland World Heritage Area.

Scope of the Act

The Wet Tropics region of Queensland is an area that has received considerable attention with respect to *EPBC* referrals, particularly its coastal localities such as Mission Beach. It could be argued, however, that the *Act* is generally underused over much of Australia.

The *EPBC Act* has the potential to become a powerful piece of legislation. The wide ranging provisions of the *Act* and their slow but progressive implementation has resulted in legislation that is evolving into a tool with the ability to make a real positive contribution to environmental protection and impact assessment in Australia. The legislation also contributes to fulfilling many of Australia's international environmental obligations, but a number of major deficiencies can be identified, including its very narrow view of what constitutes nationally significant biodiversity, and the omission of explicit recognition of climate change or invasive species as 'Matters of National Environmental Significance'.

There has been a fundamental worldwide shift in recent years towards the 'internationalisation' and 'nationalisation' of environmental issues and recognition of the commonality of the main global drivers of environmental change. Climate change, for example, is now recognised as the most urgent global environmental issue deserving of particular consideration in all areas of environmental management. The linkages and interrelationships between climate change, environmental protection, sustainable development and biodiversity conservation now form the basis of various climate change mitigation and adaptation strategies. Recognition of such linkages, and Australia's international obligations with respect to climate change, would justify its addition to the list of 'Matters of National Environmental Significance' and should be a major consideration in the *EPBC Act* review process.

Common to biodiversity legislation throughout Australia, the only aspects of biodiversity that appear to be considered important or of 'National Environmental Significance' are the rare, degraded and unhealthy (or protected areas which are generally exempt from the direct impacts of development proposals). Threatened species and ecological communities (conservation status) are only one indicator of biodiversity. Australia is home to between 600,000 and 700,000 species, and the continent has extremely high levels of endemism with 84% of its plant species, 83% of its mammal species and 45% of its bird species endemic to Australia. Key aspects of biodiversity such as endemism, genetic diversity, species richness, evolutionary potential, abundance, ecological processes and interrelationships have not translated into the significance criteria of the *EPBC Act*. The omission of these other aspects of Australia's unique and important biodiversity should be addressed in the *EPBC Act* review process to better reflect Australia's international commitments to all aspects of biodiversity, and not just threatened species and communities.

Nationally significant invasive animals, weeds and diseases, which also represent major global drivers of environmental change are other potential ‘Matter of National Environmental Significance’ that might be considered in the review process.

An area of the *Act* that needs strengthening is its ability to account for, and consider, cumulative impacts. While amendments to the *Act* now allow developments to be considered as a whole rather than in stages (where approval may, for example, be granted in stages through State laws), there is still no requirement to assess the overall impact of a series of unrelated developments. Multiple, unrelated developments that may impact one critical habitat are currently assessed separately without consideration of their combined threat to ‘Matters of National Environmental Significance’. For example, the Wet Tropics World Heritage Area is over 450 km in length with an area of 900,000 ha and a perimeter of 3,000 km which is abutted by 2,500 neighbouring properties. A proponent of a development adjacent to the Wet Tropics World Heritage Area may argue that their development will not impact significantly on the values of the World Heritage Area, however this conclusion may be very different if cumulative development impacts were properly assessed rather than assessing the impacts of individual developments in isolation. It may be difficult to prove that any one development will have a significant impact on an area’s environmental values, however, if considered cumulatively, there may clearly be a significant impact. The *Act* also cannot effectively consider “legacy” decisions that may have been made before the *Act* was introduced, but that have significant cumulative impacts over time, such as the intensity, pattern, type and extent of habitat clearing and land use over the past 200 years. It is acknowledged that a number of broader landscape scale assessment options such as strategic assessments and bioregional plans are currently possible as a result of recent amendments to the *Act* which have the potential to consider a range of impacts on a broader scale, but whether they result in adequate assessment of cumulative impacts is still uncertain (*see also comments under Assessment and Approvals*).

There are a number of exemptions in the *EPBC* legislation which are not compatible with the *Act*’s objectives. One example is that many agricultural ventures in Australia, covering a large proportion of the continent, have a long history of lawful business prior to 2000 and would appear to be exempt from the *Act* and potentially allowed to continue with harmful, long-term practices irrespective of increasing environmental impacts. It also appears that the *Act* cannot consider the impact that the otherwise lawful continuation of an activity may have on newly threatened or listed species and communities.

Assessment and Approvals

The Authority supports any measures which the review might recommend to improve the defining of what constitutes a significant impact; which formalise the process of comprehensive monitoring and auditing; and which increase the clarity and detail regarding how provisions of the *Act* and the precautionary principle are taken into account. The Authority also suggests that the lack of specific guidelines on the provision of accurate and complete information and the required level of detail, for things such as flora and fauna surveys and other matters, could lead to inconsistent assessments and decisions being made.

As previously stated, the Authority strongly supports measures to better assess cumulative impacts. However, the 2006 amendments to the *Act*, which allows for the approval of actions if they are in accordance with an accredited policy, plan or program that has been endorsed under a strategic assessment, do not necessarily guarantee a good environmental outcome. Although the

ability to approve actions undertaken in accordance with a strategic assessment or bioregional plan may be an acceptable reform in theory, there is the risk that strategic assessments will have a high level of generality and that the impacts of particular actions at particular sites may be impossible to meaningfully assess. The use of strategic assessments need to be limited to situations where specific actions can be clearly anticipated and specifically considered as part of the strategic assessment process. As a general comment, however, it is difficult to see how a mechanism basically designed for the benefit of avoiding the need for separate approvals will not result in poorer environmental outcomes. The current lack of detail in relation to accreditation makes it difficult to have confidence that such streamlining of approval requirements will function to protect Matters of National Environmental Significance. Guidelines are required which provide detailed information regarding how such accredited schemes will deal with development proposals, the level of assessment required, the criteria which requires assessment and the conditions to be imposed with approvals.

Biodiversity

Several of the 2006 amendments to the *EPBC Act* including the introduction of annual thematic nominations would appear to significantly limit the efficiency of nominating, assessing and listing species. The removal of the statutory deadlines for the Scientific Committee to assess nominations within 12 months and the Minister to decide on nominations 90 days after receiving advice, and the amendment which allows for extensions on assessments of up to five years would appear to be retrograde. The Authority contends that such long timeframes are not appropriate in deciding whether a species or ecological community is threatened, and that resources should be provided to enable assessments to be completed in a timely manner consistent with the application of the precautionary principle as enshrined in the *EPBC Act*.

The Authority sees many advantages in the review considering the need to harmonise State and Federal lists of threatened species and communities, or at least in standardising the criteria, thresholds and the categories of risk used throughout the country.

Although the main purpose of the *EPBC* register is to highlight those species and ecological communities that are facing a high risk of extinction, its practical utility lies in the listing process itself and the expert-driven compendium of information upon which a listing decision is made. Managing, maintaining and updating data and information used to ascertain threat status such as: the ecological requirements, habitat requirements, biology, geographic distributions and threats of each listed species or ecological community should be a priority as it provides an important resource that arms assessment and decision makers with the knowledge on what the environmental challenges are, where they are operating, and how to combat them. Spatial distribution maps should also be mandatory for all listed species and communities with the progressive statutory recognition and delineation of critical habitat as a trigger for *EPBC* referral purposes.

The Authority considers the listing of ‘Critical Habitat’ on the Register as a very important but very underutilized device of the *EPBC Act*. The *EPBC Act* should be amended so as to provide a mechanism for the automatic consideration of critical habitat identified, mapped and given approval, in Action Plans and Recovery Plans for listing on the Register and triggering referrals under the *Act*.

There is a perception that there has been a general trend of downgrading of recovery planning and their implementation due to resourcing issues, time delays, and the removal of mandatory recovery planning requirements for listed species. If this is in fact the case, then it is a retrograde step in the evolution of the *EPBC Act*. The roles of recovery plans also need to be reassessed and a clearer nexus between the recovery plan and the referral and development assessment processes established.

Protected Areas

The Authority sees many benefits in simplifying the process of accreditation of protected area management plans such as World Heritage Property plans. Commonwealth accreditation of other agency plans would greatly reduce duplication, simplify process and save the taxpayer money.

Another related issue that needs to be looked at is the review interval for management plans for declared World Heritage properties. Schedule 5 of the EPBC Regulation (10.01) states that plans should be reviewed at intervals of no more than 7 years; however the review period for subordinate legislation in Queensland (which includes, for example, the statutory Wet Tropics Management Plan) is based upon a ten year review cycle. A similar situation may exist in other States.

Indigenous Involvement

At the regional or local level the *EPBC Act* has had very little, if any, influence in facilitating, supporting or promoting indigenous involvement in biodiversity issues or in decisions made under the *EPBC Act* in the Wet Tropics.

Compliance and Enforcement

The Authority acknowledges the significant increase in resources devoted to compliance and enforcement in recent times. It is the Authority's view that the quality as well as the quantity of investigations undertaken in the Wet Tropics region have improved substantially as has the level of liaison, collaboration and cooperation between agencies at all levels of government in relation to assessment, compliance and enforcement of *EPBC* legislation.

Given the increasingly important role of the *EPBC Act* in regulating development, it would be prudent to formalise a structured approach to post referral and approval verification, monitoring and auditing. In addition to ensuring that conditions of project approval are complied with, any monitoring and auditing should be designed to feed back into the assessment and approval process for refining condition-setting procedures.

Development approvals are generally associated with extensive conditions and requirements such as the provision of management plans before actions can commence. Targeted monitoring and reporting is needed to see whether such management plans actually prevent harm to the 'Matters of National Environmental Significance' they are designed to protect, or appropriately safeguard against damage to World Heritage values. Similarly, there is no guarantee that attaching conditions will be sufficient to effectively protect the environment unless regular and thorough reviews are undertaken for many years/decades following an approval, especially for a large-scale development.