



Hon Andrew McNamara MP
Member for Hervey Bay



**Queensland
Government**

**Minister for Sustainability,
Climate Change and Innovation**

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The Honourable Peter Garrett AM MP
Minister for the Environment, Heritage and the Arts
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 31 October 2008 concerning the statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Queensland Government looks forward to participating in the review being undertaken by Dr Allan Hawke and his panel. There are several initial matters that Queensland would like Dr Hawke to consider. These issues are summarised in the attachment. I am happy to arrange for relevant Queensland officers to meet with Dr Hawke about these and any other matters that may be of mutual interest. I would also like an opportunity to provide further advice to you following the Queensland Government's consideration of Dr Hawke's findings.

I note other work is in progress that will also inform Dr Hawke's work. This includes the work of the CoAG working groups dealing with Infrastructure Planning and Business Regulation and Competition. The Environmental Protection Agency has also been recently contacted by the Senate inquiry into the operation of the EPBC Act.

Thank you for bringing this matter to my attention. If any further information is required, John Lane of the Environmental Protection Agency on telephone (07) 3227 8526, would be happy to assist.

Yours sincerely

Andrew McNamara MP
Minister for Sustainability,
Climate Change and Innovation

Att.

Level 17
160 Ann Street Brisbane 4000
PO Box 15155 City East
Queensland 4002 Australia
Telephone +61 7 3336 8032
Facsimile +61 7 3227 6309
Email sustainability@ministerial.qld.gov.au
ABN 65 959 415 158

Review of the Environment Protection and Biodiversity Conservation Act 1999

Initial issues raised by the Queensland Government

Scope of the Act

1. Matters of national environmental significance

The reason for including the environment of the Great Barrier Reef Marine Park in the matters of national environmental significance (NES) is unclear as both world heritage areas and the Commonwealth marine environment are included in the NES. Further consideration of the objective and implications of this action should be considered.

Assessment and Approvals

2. Transfer of approvals

The State, through the Government Owned Corporations, owns a number of significant assets that are subject to approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Approvals provided under Section 133 of the EPBC Act allow an entity to take or undertake a specific action for example, to construct and operate a large dam.

The approvals provided under the EPBC Act are specific to an entity and are not automatically transferred when an asset is transferred to a different entity.

Section 145B of the EPBC Act provides for the transfer of an approval. However, an approval to transfer requires the consent of the Australian Government Minister for the Environment (the Minister).

Prior to the Minister considering the request for transfer of an approval, third parties are provided with an opportunity to challenge the approval.

When considering future institutional arrangements (which may involve the sale or transfer of assets), it is important for the status of an approval to be maintained.

The risk that a previous approval may be changed limits the State's ability to transfer ownership of significant assets, for example power generation assets and large dams, limiting the States ability to optimise institutional arrangements. The ability to maintain approved status should be considered during the review.

3. Consequential and non-consequential related actions

Consideration should be given to the primary and secondary action provisions (ss 25 AA and 28AB) as to whether they require further clarification and the potential of extending the principle to separate non-consequential but related actions (e.g. the assessment of a water pipeline separately from the water allocation decision).

4. Timeframes for proponents

The establishment of a statutory timeframe within which support information, such as an environmental impact statement, is provided by a proponent be considered.

5. Assessment methods

Consideration should be given to the use of a panel of independent experts (relevant for the type of application and potential impacts) to review the EIS or other major documents provided by development proponents to ensure the EIS document (which is mainly funded and commissioned by the applicant) reflects the reality.

6. Assessments and approvals bilateral agreements and strategic assessments

Notwithstanding the current assessment bilateral agreement, there still appears to be unnecessary overlap and duplication of effort between Queensland and Commonwealth agencies. Some consideration as to how to streamline respective jurisdictional involvement in assessments needs to be considered.

Environmental offsets are considered a legitimate means of mitigating impacts from essential development. The Queensland Government has recently adopted a policy concerning the use of offsets. Bilateral agreements may need to address the potential issue of jurisdictions each requiring offsets from a proponent and such requirements being different, possibly mutually exclusive. The suite of potential offsets (including land for land; financial payments; and other indirect measures) needs to be mutually agreed.

The use of strategic assessment processes should be promoted with a view to 'front loading' local area or issue specific plans, therefore minimising the need for assessment and approval of individual components of large, multifaceted development proposals.

Biodiversity

7. Threatened species and ecosystems

The review should consider options for increasing the consistency between species listed under the EPBC Act and those listed under the Queensland *Nature Conservation Act 1992* (NCA). Species listed nationally as threatened are sometimes considered least concern in Queensland. Referrals to consider issues relating to federally listed threatened species are outside Environmental Protection Agency (EPA) jurisdiction where the plant species involved are not similarly listed under the NCA. The EPA has limited power to apply stringent conditions to limit damage to wild federally listed threatened plant species.

The criteria used by the Commonwealth for species listing do not necessarily use the latest version of international accepted criteria (ie International Union for Conservation and Nature) whereas a number of States use IUCN criteria.

The Commonwealth should accredit State species listing processes for those species endemic to a particular State. This would save Commonwealth resources and improve efficiency. Mutual recognition of species and ecological communities' lists would be appropriate.

The EPBC has a national focus therefore the listing of species and communities should be in this context. The Commonwealth should consider restricting its interest to critically endangered and endangered species and ecological communities.

The Commonwealth should use the Queensland ecosystem mapping (used for Queensland's *Vegetation Management Act 1999*) for ecological communities that occur in Queensland. The mapping has been accredited by the Commonwealth. The current EPBC listings have condition attributes for ecological communities that landholders find very confusing and very difficult to apply whereas the State mapping does provide a reference for assessment.

The ecological communities that are listed are supposedly those components of these ecological communities in good condition. The decision rules to apply the 'good condition' factors are difficult to apply and landholders find them confusing.

There are a number of ecological communities that are widespread but have very small minimum sizes (1 ha, 0.5 ha) of occurrence which have been listed. This may be incongruous with the national focus of the EPBC Act and the science that shows remnants of a very small size are not sustainable.

8. Listing process

The amendments to the Act in 2006 that established a process for prioritising nominations and selecting those of highest priority for assessment are strongly supported.

The basis for listing species under EPBC (and most State threatened species legislation) is currently based on a 'threat to extinction' approach. In view of limited resources for biodiversity conservation, climate change impacts on biodiversity becoming more obvious and the vastness of Australia's landmass and marine environment, there is an urgent need to be more strategic in our approach to managing and protecting our biodiversity.

In Queensland, the 'Back on Track species prioritisation framework' has been designed to prioritise Queensland's native species to provide strategic direction for conservation and recovery.

This framework prioritises species using multiple criteria, to allow the identification of species that are in trouble, and which have the greatest chance of recovery. In only a short space of time, the framework has been able to assess 4107 plant and animal species from marine, freshwater and terrestrial habitats.

There are seven criteria used in the 'Back on Track species prioritisation framework.' They are grouped under three major areas:

- Probability of extinction – determined by expert assessment against IUCN criteria.
- Consequences of extinction – the species' endemism, importance of the species' interactions within the ecosystem, and social values (importance to the community). This section deals with ecological and social issues associated with consequence of extinction.
- Potential for successful recovery – consideration of knowledge of threats and ability to affect recovery. That is, knowledge of threatening processes, capacity to affect recovery and need for ongoing management

Criteria used in a prioritisation framework, such as the 'Back on Track species prioritisation framework', can be refined to consider issues such as climate change and other factors that may be considerations in determining whether a species should be listed as threatened or even in assisting in determining if threatening processes affecting species or ecological communities can be managed.

This prioritisation framework can be made available to further assist refining the Commonwealth listing process or move to a process that considers more than a 'threat to extinction' approach.

Listing proposals take a considerable length of time to assess and decide. Consideration should be given to the need to provide for temporary protection species and communities proposed for listing.

9. Listing Decision

As above – a process that considers other factors such as ‘do we know the threats?’, ‘can we manage the threats?’ may assist in providing a clearer basis for listing of species or ecological communities and threatening processes.

There is also strong evidence to support the need for a process to review listed threatened species and, at present, there is no mechanism under the EPBC Act to allow this.

Preliminary analysis using the ‘Back on Track species prioritisation framework’ indicates that, of the EPBC Act listed taxa that are endemic to Queensland (>80% of the global population is in Queensland), approximately 10% may not be considered ‘threatened’.

Furthermore, the analysis also shows that a further 617 taxa not listed under the EPBC Act and that are endemic to Queensland (>80% of the global population is in Queensland) would be considered as threatened (87 taxa would be considered as Endangered).

10. Categories of threat

The categories of threat are consistent with the *IUCN Red List Categories and Criteria: Version 3.1* which provides a simple and easily understood objective framework for classifying species at high risk of global extinction.

Use of the IUCN Red List Categories is well established. However, it may be useful to further refine lists so that there is clearer understanding as to the reason a species may be listed. Currently, species attracting resources on the basis that they are listed as threatened may be at odds with the fact that population numbers are stable and there is no impending threat to those populations. Scale is also a factor. IUCN criteria were developed for assessing species at a global level. This can become problematic as we shift to smaller scales ie use the same criteria to assess taxa at the national level rather than the global. As a result we may list taxa as threatened at times when they are secure elsewhere ie nearby countries. At other times, the scale issue may provide prominence to issues which are not necessarily a problem at a larger scale.

11. State and Territory biodiversity protection processes

There are opportunities to reduce duplication between the Commonwealth and State and Territory listing regimes to make these more open and transparent, but these changes would need to be sufficiently resourced.

12. Recovery plans

The amendments to the Act in 2006, removing the requirement for the preparation of a recovery plan for every listed threatened species and ecological community and replacing it with a requirement for the provision of conservation advice and the option for the Minister to develop a recovery plan, having regard to the advice of the TSSC are supported.

Mutual recognition of State and Commonwealth threatened species or ecosystem recovery or conservation plans should be promoted. If a plan has been prepared by a jurisdiction, mutual recognition would provide resource savings.

13. Effectiveness of provisions

Greater compliance monitoring and enforcement of Commonwealth regulations regarding cetaceans (specifically interacting with cetaceans and whale watching) would be beneficial and complement State actions.

14. Emerging pressures such as climate change

An assessment of the adaptive capacity of existing legislation to manage and mitigate potential climate change impacts should be conducted. For example, climate change impacts may lead to changes within the fisheries and aquaculture sector leading to a shift in preferred target species and locations for marine industries. This may have impacts on marine species, including cetaceans, such as displacement, entanglement and increased competition with other species for suitable food and habitat within a changing environment. State, Territory and local government marine planning initiatives may also be engaged to help address climate change impacts.

International movement of wildlife

15. Agreements

The EPBC Act and Regulations adequately address the overarching issues associated with the live export of Australian native species and import of exotic species. However, consideration should be given to the benefits of specific agreements between exporters and importers to ensure appropriate use of exported Australian native wildlife.

Under Queensland legislation, export agreements are required for all native mammals and their progeny destined for overseas export. These requirements are in addition to those prescribed under the EPBC Act. The EPA encourages the trade of reproductive material in place of live animals to initiate and facilitate captive breeding activities overseas.

16. Importation

There has been considerable tension between the States and DEWHA over a number of approvals to import pest risk species. Further improvements to the current processes are considered possible.

Approval to import means approval to import to anywhere in Australia subject to the category of approval. However, possession of that species (even under the conditions approved by the Australian Government) may be prohibited in a number of jurisdictions. This leads to confusion. Making importation approval subject to possession requirements of designation States should be considered. This would also assist in ensuring compliance with possession requirements for restricted species.

It is easier to control restricted species through importation to the Country rather than importation from one State to another. A further complication is the broader risk categories for keeping restricted species once they have been imported. These should also be subject to review.

17. Domestic movement of exotic wildlife

There is room for improvement to achieve greater consistency and alignment between jurisdictions regarding the regulation of movement of species.

Some intelligence suggests that there is a considerable underground trade in prohibited species and links to organised crime. Compliance and enforcement of legislation is generally underresourced in all jurisdictions. It may take many decades for a major pest problem to emerge from illegally held prohibited species, but by then the problem is expensive and more difficult to control. Prevention is far more cost effective than responding after the fact. Process for the movement of exhibited exotic and native wildlife needs to be streamlined to avoid duplication and target prevention. Currently the Queensland NCA imposes restrictions on the export of native wildlife (both interstate and out of Australia). Queensland is developing new legislation for the regulation of both

native and exotic exhibited wildlife and this legislation will seek to streamline the movement process to avoid unnecessary duplication.

Protected areas

18. World heritage

The EPBC Act requirements for accreditation of a management plan for a World Heritage property should be reviewed as no management plan for a property listed for natural values has yet been accredited, and indications are that it is unlikely to happen. There should be a capacity for the Act to recognise a management program that meets the requirements of the Convention and of the guidelines developed by the Conference of Parties. It is worth noting that this circumstance has been recognised in the draft Australian World Heritage Intergovernmental Agreement which refers to the World Heritage management system or management plan for each property. The Act should better recognise the obligations of the Convention and provide a process for recognising adequate management arrangements put in place by State jurisdictions.

Comprehensiveness

19. Other matters

A range of biodiversity, conservation, heritage and Indigenous matters are not reflected in the current Act. These omissions should be considered further as part of the ongoing review. For example, the EPBC review provides an opportunity to consider the outstanding needs of both Aboriginal people and nature conservation raised by the Indigenous Protected Areas Program. Further needs and omissions are likely to be identified through a review of current treaty obligations and non statutory practices. These may best be addressed through the review panel process.