



Government of **Western Australia**  
Department of **the Premier and Cabinet**

**OFFICE OF THE DIRECTOR GENERAL**

Enquiries: Rosh Ireland

EPBC Act Review Secretariat  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787  
CANBERRA ACT 2601

Dear Sir/Madam

The Western Australian Government welcomes the Independent Review of the Commonwealth *Environment Protection and Biodiversity Conservation Act (EPBC Act) 1999*.

The Western Australia Government is committed to sustainable development, without comprising appropriate and proper environmental assessment and planning processes, for the benefit of local communities and the wider Western Australian community.

The Government is cognizant of various shortcomings of approvals processes relating to major projects, State, regional, land and housing developments. Consequently, two major reviews were initiated late in 2008. First, a broad ranging review of the State's approvals processes by a Ministerial Taskforce, chaired by the Premier, and supported by a Directors General working group, commenced in November 2008. Further, the Minister for Mines and Petroleum has convened an Industry Working Group to advise him on approvals processes for mining and petroleum developments. It is anticipated that the Industry Working Group will submit its advice to the Minister in April 2009.

In addition, the Environmental Protection Authority, an independent statutory authority, commenced a review of critical aspects of the environmental impact assessment process in February 2008. This review is nearing completion and it is anticipated that a report will be submitted to the Minister for Environment in late February 2009.

The Western Australian Government's attached submission is informed by these reviews' preliminary findings.

Significant concerns relate to the operation of the EPBC Act where it overlaps and interferes with the efficient and timely operation of the State's own environmental assessment processes. Not only does this generate inefficiencies, additional costs delays, and unnecessary uncertainty, it also compromises the optimal delivery of the often competing priorities of housing, infrastructure and environmental protection/biodiversity conservation within Western Australia's jurisdiction. There are clear opportunities to deliver better habitat protection; to improve the efficiency, transparency and consistency of the processes, policies and decisions; and to enable sustainable development. While these matters are addressed in detail in the submission, I would like to draw particular attention to the following issues.

The current approach to the assessment of threatened species and ecological communities in urban areas experiencing high growth and unmet demand has contributed to protracted approvals processes (for example, Carnaby's Black Cockatoos and Western Ringtail Possum). A more effective approach would comprise recognition of the State's regional planning processes, and the identification and use of mechanisms that allow for sustainable development with effective and timely assessments.

Despite the existence of bilateral agreements for assessment between the Commonwealth and Western Australia, these are rarely "triggered", leading to separate approvals under the EPBC Act and consequently delays for major projects. Requirements for bilateral agreements are highly prescriptive and prevent accreditation of some Western Australian environmental assessment.

I note that there is renewed interest on the impact of Commonwealth legislation and administrative practices on land use planning, environmental assessment, and approvals for major infrastructure projects. As you would be aware the COAG infrastructure Working Group is reviewing approvals processes for major infrastructure projects, and intends to identify overlaps and duplications between State, Territory and Commonwealth statutes. Initial evidence to the COAG major infrastructure approvals review suggests that, despite the existence of 'bilateral assessment agreements' between the Commonwealth and States/Territories, separate approvals appears to be delaying major projects. Further, the Productivity Commission's Draft Report on its Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector similarly notes that the current regulatory framework, comprising a plethora of State and Commonwealth statutes, imposes unnecessary burdens on the upstream petroleum sector.

Finally I note that the operation in Western Australia of the EPBC Act overlaps with the approvals required under the WA *Aboriginal Heritage Act 1972* and the Commonwealth *Native Title Act (NTA) 1993*. This has required the Western Australian Government to simultaneously obtain environmental approvals, necessary NTA future act consents from native title parties (both holders and claimants), and Aboriginal heritage clearances from traditional owners. The Kimberley Strategic Assessment is an apposite example that illustrates the complexities of acquiring the necessary approvals for resource development. While the Commonwealth and State entered into a Strategic Assessment pertaining to environment and heritage matters, the necessary future acts processes remain for the State to obtain under the NTA.

If you have any questions please contact Rosh Ireland on (08) 9222 9535.

The Western Australian Government would welcome an opportunity to provide further information to clarify aspects of its submission when the current reviews have reported, and meet with the Committee to discuss our submission.

Yours sincerely



Peter Conran  
DIRECTOR GENERAL

# **WESTERN AUSTRALIAN GOVERNMENT SUBMISSION**

## **INDEPENDENT REVIEW OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999***

### **Introduction**

Western Australia acknowledges the Commonwealth's legitimate involvement on matters of national environmental significance and for Commonwealth agencies, lands and waters, and does not seek to compromise the protection of these. It does consider that there are measures that are likely to achieve greater effectiveness in the operation of the EPBC Act, some of which are policy or administrative in nature and others which require legislative change.

The Western Australian Government, through its State agencies, has had considerable interaction with the administration of the EPBC Act, including:

- Assessments of controlled actions done in accordance with a bilateral agreement or accredited on a case by case basis
- Strategic assessments
- Listed threatened species and ecological communities
- Regional Forest Agreements
- Accreditation of Western Australian fisheries
- Listing of marine protected species
- World Heritage areas
- National Heritage List
- Ramsar wetlands
- Commonwealth marine reserves and Commonwealth waters
- International movement of wildlife.

Western Australia's submission has been informed by this experience, and principal emphasis has been given to these matters, consistent with the terms of reference.

In addition, Western Australia has been undertaking a review of its approvals processes to ensure that Western Australia can continue to attract investment in key industries and development while maintaining high standards of environmental protection and biodiversity conservation. The review has developed a set of short-term administrative and legislative measures to improve the efficiency and effectiveness of statutory processes in Western Australia. These are being progressively implemented over the early part of 2009. The findings of this review provide indicative direction for improving the EPBC Act, particularly in relation to its interactions and overlap with State processes.

## Environmental Assessment and Bilateral Agreements

### *Scope and timing of application of EPBC Act in assessments*

The current statutory provisions of the EPBC Act provide for assessment of actions that are likely to have a significant impact on a matter of national environmental significance. This does not include a planning scheme. Western Australia amended its rezoning processes in the mid 1990s by introducing provisions into the *Environmental Protection Act 1986* (EP Act) and the *Planning and Development Act 2005* to provide for better integration of environmental assessment and planning of region schemes at the rezoning stage. Assessment of schemes allows for planning of conservation areas and other land uses prior to rezoning of land. Detailed planning consistent with the zonings is then carried out at the structure planning or subdivision stage.

As the EPBC Act does not allow assessments of planning schemes or rezoning, Commonwealth assessment is likely to be later in the planning process of the development of urban land. This is occurring at subdivision or development approval stage after varying levels of State approvals have already been obtained.

This late and incremental decision-making reduces the opportunity for strategic consideration of complex biodiversity issues, adds to delays and costs both to developers and the Government<sup>1</sup>, and does not deal well with cumulative environmental impacts.

For urban land where the State has already undertaken environmental assessment under the *Planning and Development Act 2005* and the EP Act, Commonwealth processes should give full consideration to the State's assessment and any environmental requirements that were imposed on developers by the State.

Of most concern in respect of EPBC Act assessments in Western Australia's urban areas are the threatened fauna species, Carnaby's Black Cockatoo and Western Ringtail Possum, and threatened flora species, *Caladenia huegelii* and *Drakaea elastica*.

The application of the EPBC Act has not determined a framework in which meeting the habitat requirements of nationally listed species could occur, nor commissioned its own research. There is uncertainty regarding the specific range, behaviour, nesting and feeding of significant species and therefore measures necessary to protect them. The State has initiated research into Carnaby's Black Cockatoo and the Commonwealth is currently a participant in this research but, in the absence of this information, the Commonwealth has indicated its intention to continue with assessment of individual smaller scale projects. This is a missed opportunity to

---

<sup>1</sup> A 150-lot urban land development in Perth was delayed by 13 months when it was assessed by the Commonwealth environmental assessment process under the EPBC Act, imposing an additional cost of \$2,600 per lot. This information was derived from the Department of Treasury and Finance's survey of major property developers in Western Australia on the costs (both financial and time) of each planning and environmental step of the land development process, which was conducted in 2007.

Two land developments in the Peel region with over 800 lots were unable to proceed after being assessed under the EPBC Act, due to the presence of the endangered Carnaby's Black Cockatoo. These land developments were in the final approval stage of the State's land development processes, and the assessment by the Commonwealth Government was made late at the subdivision stage in the process.

address the conservation of this species in a more coordinated way that recognises the contribution of regional planning. It also adds a duplicative regulatory burden without meaningful additional environmental outcomes.

Western Australia requests that the Review give attention to the application of the EPBC Act to the management of land and housing supply, state infrastructure needs and the need to balance competing economic, social and environmental demands in complex urban areas experiencing high growth and unmet demand. The current piecemeal approach under the EPBC Act could be improved to deliver better habitat protection and improve the consistency of decision making, reduce confusion and delays to proponents and streamline decision making processes.

Western Australia is willing to work with DEWHA to determine an approach which improves mechanisms for the protection of key nationally listed species and ecological communities across their range and allows for sustainable development with effective and timely assessment and decision-making processes.

#### *COAG Reforms*

Reforms to environmental assessment and approvals processes are currently being progressed through the regulatory reform agenda of the Business Regulation and Competition Working Group (BRCWG) of the Council of Australian Governments (COAG). There are linkages between the work of the BRCWG and reforms to the operation of the EPBC Act as part of this Independent Review.

*At the 3 July 2008 COAG meeting, COAG endorsed "the bilateral assessment agreements which have been negotiated between the Commonwealth and each State and Territory, with the exception of Victoria where an agreement will be reached by 31 August 2008. Development proposals will be assessed only once, through a combined assessment process covering both Commonwealth and State responsibilities.*

*COAG has further agreed to the identification of opportunities for strategic assessments under the Environment Protection and Biodiversity Conservation Act 1999 to avoid unnecessary delays in development approval processes. Strategic assessments are conducted over an entire region and provide a mechanism to approve classes of development which have been assessed under this process, rather than conducting individual assessments and approvals. Strategic assessments provide certainty for development proponents and reduce duplication, while providing greater protection for the environment.*

*COAG has instructed the Business Regulation and Competition Working Group (BRCWG) to report back to COAG at its October meeting with a framework for identifying opportunities for strategic assessments."*

Western Australia supports the intent of the BRCWG to redress some of the duplication and overlap between the EPBC Act and State environmental assessment processes.

### *Auditing and Compliance*

Western Australia supports the recommendations of the Australian National Audit Office Report No. 38 entitled "Referrals Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999". In particular we support the use of an accreditation scheme for consultants and modification to the EPBC Act database to allow effective tracking and reporting of compliance and enforcement activity. Another priority is the speedy adoption of recommendation 5 – finalising compliance procedures and guidelines.

Western Australia is also concerned that the assessment, incident reporting and compliance auditing processes under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, which are carried out under delegation by the Western Australian Department of Mines and Petroleum (formerly Industry and Resources) for the Commonwealth, are being duplicated by DEWHA under the EPBC Act.

### *Offsets*

Western Australia notes that DEWHA has prepared a draft offset policy which has been in draft form since August 2007. Its draft status and lack of detail have exacerbated uncertainty and delays for projects subject to the EPBC Act.

Western Australia is concerned that the Commonwealth's approach to offsets results in delays, uncertainty and higher development costs without getting the best environmental outcome as it appears to have a narrow focus on reservation of equivalent sized offset areas (or larger areas where habitat rehabilitation is involved) in a piecemeal way. Offsets have been required involving land that is already zoned urban, which has a much higher value than non-urban land. From an environmental perspective, and given the cost of purchasing urban zoned land, better outcomes for nationally listed species may often be achieved through reservations on rural and non-urban zoned land.

The recent example of the Fiona Stanley Hospital provides a relevant case study of the way in which the EPBC Act is being applied in practice, and illustrates the improvements required. The site of the hospital is located near the recently completed Perth to Mandurah railway line. The offsets package that was required by the Commonwealth under the EPBC Act involved the conservation of five hectares of adjacent urban zoned land. The cost of this land is estimated at about \$10m.

The offset area is prime residential land, directly adjacent to the railway line, and therefore ideal for the development of sustainable housing. To illustrate the impact of this policy on the overall level of habitat protection, it should be noted that \$10m could have instead been used to purchase 3,000-4,000 ha of land on the western edge of the wheatbelt (e.g. in the New Norcia or Beverley area). In addition to the sub-optimal habitat outcome, the process has delayed the development of the hospital and led to substantial cost increases.

It should be noted that once decisions on land development through rezoning have been made, the responsibility for obtaining approvals under the EPBC Act falls to the proponent of individual projects rather than the State. Individual proponents have limited capacity to achieve strategic reservations for biodiversity conservation and (generally) no capacity to manage these areas into the future. This has the effect of involving the State on behalf of developers both in terms of negotiating outcomes sought by the Commonwealth and the ongoing management of areas set aside.

The ongoing management of areas set aside as offsets will generally fall to State or local government. If the State accepts the responsibility to negotiate on behalf of individual proponents, then the very fact that land has been rezoned (and has a higher financial value) means that the State may well have financial exposure in terms of compensation for zoned land and the cost of purchasing urban or industrial zoned land may also be prohibitive.

#### *Recognition of State processes and bilateral agreements*

There is a strong case for legislative and administrative reform of the EPBC Act to enhance strategic assessments and the capacity for bilateral agreements to apply more widely to other processes, including to planning schemes, clearing permits, aquaculture licences and petroleum assessments, where these can meet agreed benchmarks.

In metropolitan Perth the State has made a considerable commitment to protection of land for conservation via the conservation reserve system and Bush Forever. There appears to be no recognition by DEWHA of land set aside in the Metropolitan and Peel Region Schemes, national parks and nature reserves. There is 76,000ha of land in metropolitan Perth that has been set aside for parks and reserves. In addition, the State has allocated \$100m to purchase land for Bush Forever. Western Australia is unique in having a funding stream that guarantees land purchases for open spaces and parks in metropolitan Perth through the Metropolitan Region Improvement Tax. (This tax is levied at 0.15 cents for every dollar of the unimproved taxable value of the land and applies to land situated within the metropolitan region which is subject to land tax).

Western Australia seeks recognition of its environmental assessment during zoning and structure planning processes including reservation of land for habitat protection and public open space. Western Australia seeks a joint way forward where State processes are considered, and where these meet certain agreed benchmarks, accredited under the EPBC Act.

Such bilateral agreements would avoid cases such as where an application for a five hectare aquaculture development within Lake Argyle required referral under the EPBC Act as a result of it being listed as a Ramsar wetland despite it having a low environmental risk and not triggering assessment under Part IV of the EP Act.

Any bilateral agreement regime would include transparent and robust reporting mechanisms to ensure appropriate analysis of environmental monitoring and management plans. Large or environmentally significant proposals will still be assessed by the EPA under the provisions of Part IV of the EP Act.

These reforms would significantly address the current duplication of State/Commonwealth environmental assessments.

In addition, review of the regulations under the EPBC Act (Part 2B), under which assessment bilateral agreements require that the State must meet the requirements of Schedule 1, is warranted. Western Australia considers that these are highly prescriptive and prevent accreditation of State environmental assessment processes which meet high standards of transparency and accountability and achieve good environmental outcomes. The Administrative Procedures made under section 122 of the EP Act are currently under review as part of a review of critical aspects of the

environmental impact assessment process. It is anticipated that the outcome of the review will be more efficient processes while maintaining the important values of the current system.

### *Referral Processes and guidelines*

There are concerns over the lack of clarity and consistency of requirements to determine the need for referral, and in particular what constitutes significant impact and critical habitat for threatened species, and the application of timelines to address controlled actions. Clear thresholds for referral would assist in providing some certainty. In addition, public awareness of the Significant Impact Guidelines needs to be raised.

Under the EPBC Act “an action will require approval from the Minister if the action has, or is likely to have, a significant impact on a matter of national significance”. The Department of Environment and Conservation (DEC) is the lead WA agency with responsibility for management of matters listed under the EPBC Act and environmental impact assessment. It also has a lead role in facilitating communication between proponents, local managers of areas, neighbouring property owners and other stakeholders where actions which have significant impacts on a matter of national environmental significance may occur.

Clear boundaries for determining when an assessment is required are needed. Relying on proponents to self-test is unreliable and creates confusion. The Department for Planning and Infrastructure is aware of cases where proponents are reluctant to refer their projects as they are concerned at the time taken for a project to be approved if it is declared to be a controlled action.

Additional guidance is required for proponents referring a proposed action. Relevant State agencies for particular proposed actions have been asked by proponents to provide more information and advice on the significance of potential environmental impacts of the proposal. A more concise and consistent process needs to be in place so that the requirements are clear for not only the proponent but also the agencies involved.

It has been the experience of Government agency staff dealing with the referral process that it is made more difficult and uncertain by unclear channels of communication with Commonwealth officers charged with implementation of the EPBC Act. The process could be improved with EPBC Act compliance officers being dedicated to individual States so that timely and transparent referral processes are practised and the State agencies involved with the process are kept regularly updated on the outcomes of impact assessment procedures. It would be helpful if annual updates of all cases that undergo referral through the EPBC Act for Western Australia were provided.

### *Suggested reforms*

In pursuing reforms, the State is seeking:

- regard by the Commonwealth Minister to State planning and environmental processes to avoid unnecessary duplication;
- the preparation of additional bilateral approval agreements for Western Australia to include planning schemes, aquaculture assessments, clearing permits and petroleum assessments for which the State's environmental assessment processes meet benchmarks;
- application of the EPBC Act at an earlier strategic stage, similar to the EP Act, rather than at the final subdivision stage. This may require legislative change to enable DEHWA to assess planning schemes as a controlled action under the EPBC Act;
- more definition of the threshold for the application of the EPBC Act for significant impacts on matters of national environmental significance [note that it is not a "national significance" that the EPBC Act is concerned with but a significant impact on a matter of NES];
- greater understanding and recognition of Western Australia's commitment to regional reservations and Bush Forever as part of an offset to development using wider biodiversity criteria;
- provision for the EPBC Act to take account of the limitations inherent in its application in highly constrained environments such as urban areas;
- greater scientific research on species and their habitats including the specific range, behaviour, nesting and feeding of significant species and therefore measures necessary to protect them;
- greater clarity, consistency and transparency of requirements to determine the need for referral; and
- timeframes for assessments of controlled actions and strategic assessments within the EPBC Act.

### **Strategic Assessments**

The Western Australian Government supports efforts to increase strategic assessments where these achieve more efficient regulation, provide opportunities for improved environmental outcomes and can be undertaken within reasonable timeframes and costs.

In addition, Western Australia believes that increased use of bilaterally accredited management arrangements or bilaterally accredited authorisation processes would result in better planning and environmental outcomes that promote sustainable development.

There are a number of agreements between the Western Australian and the Commonwealth Governments, including for example, the Kimberley Strategic

Assessment and the Memoranda of Understanding for the Commonwealth's South West and North West Bioregional Marine Plans. These provide opportunities for the State and Commonwealth governments to become engaged at the early stages of program development. Such actions have the potential to lead to greater clarity, certainty and timeliness in processes in State legislation and under the EPBC Act.

A strategic assessment at an appropriate scale for a timely outcome on certain matters of national environmental significance that are critically affected by urban development, including threatened flora and fauna species and threatened ecological communities, is desirable.

Notwithstanding the benefits of strategic assessments and bilateral agreement capacities under the EPBC Act, these processes may pose risks and potential costs to Western Australia. These include:

- the potential for additional delays in Western Australian land development and infrastructure processes while strategic assessments are being undertaken for a class of land or area of land;
- the difficulty in reaching mutually satisfactory outcomes (for the State and Commonwealth) in respect of strategic assessments, including an agreement about which jurisdiction does what and who pays for implementation of the strategic assessments; and
- where bilateral agreements are utilised, staff and resourcing limitations within the relevant State Government agencies to undertake the environmental assessments need to be considered.

### **Listed species and ecological communities**

The current operation of the listing process for threatened species and communities at the State and Commonwealth level is not efficient, and has created differences between the lists which have not been able to be resolved. This was identified in the National Audit Office Audit Report No. 31 into the Conservation and Protection of National Threatened Species and Ecological Communities as an issue which required resolution.

#### *Listing criteria*

Species and ecological communities may be listed as threatened under the EPBC Act if they meet defined criteria included in the Act. The criteria in the Act are based on IUCN criteria, but differ in substantive ways. The unique classification of listed species and communities in the EPBC Act and its difference from processes operating in other Australian and international jurisdictions creates confusion and some uncertainty.

The inclusion of the criteria in the EPBC Act is less flexible than having the criteria in subsidiary legislation, and hence amendment of criteria to meet new understanding and standards of approach in the scientific community does not occur. The use of different criteria also operates against standardised listing processes, and reduces opportunities to coordinate processes or implement accreditation of processes (see below).

It is recommended that the EPBC Act be amended to remove the criteria from within the Act itself, and that these be defined in subsidiary legislation consistent with the IUCN criteria. This would improve flexibility and the capacity to amend the criteria in a timely way, while maintaining the accountability of legislation. It would also create consistency in the listing approach with those jurisdictions, such as WA, which use the IUCN criteria.

#### *Review of listed species*

It would be useful to have in place a periodic review of the status of all listed species to address, on a priority basis, those species where there is insufficient knowledge. This approach recognises that the idea of 'recovery' implies a change in listing of a species/community from high risk to a lower risk level. If a regular review is not undertaken, scientists, managers and decision makers will fail to understand if current actions are sufficient to recover the listed species.

#### *Operation of Commonwealth Threatened Species Scientific Committee*

The current approach for listing threatened species and communities is that these are usually listed through a State or Territory procedure, followed by a separate and different Commonwealth procedure that uses different criteria as outlined above. This is inefficient, and fosters differences in the lists maintained by States and under the EPBC Act because the Commonwealth Threatened Species Scientific Committee is not able to cope with the volume of work required to align the lists.

It is recommended that there be some form of bilateral arrangement with the States, or accreditation of each State's listing process, so that the Commonwealth Threatened Species Scientific Committee is able to adopt amendments to the lists made by State processes. As a general rule such State processes are well informed in terms of knowledge and expertise.

A bilateral agreement or accreditation could result in automatic listing under the EPBC Act of State endemic species and ecological communities, and assessment by the Commonwealth Threatened Species Scientific Committee of cross-jurisdictional species. Alternatively, the Commonwealth Threatened Species Scientific Committee could place greater reliance on the outcomes of the State process, and reduce its assessment requirement.

#### *Cumulative impacts on threatened species and ecological communities*

Western Australia notes that the current emphasis on project-based assessment processes limits the effectiveness of the EPBC Act in dealing well with cumulative impacts. As outlined above, the use of strategic assessments for key species and ecological communities would be more likely to lead to improved conservation outcomes, and would provide certainty for developers.

#### *Recovery planning*

There has been limited benefit from the recovery plan and key threatening processes/threat abatement plan provisions of the EPBC Act. Provisions for the listing of threatened species and communities, recovery plans and threat abatement plans in the EPBC Act are supported. Achieving outcomes in these areas is a matter of program expenditure that is planned and consistent over a reasonable period of time.

Natural Heritage Trust expenditure has been *ad hoc* and inconsistent in these areas. It is too early to comment in respect of the new Caring for our Country and Environmental Stewardship programs.

Unless there are targeted and dedicated programs (with funding) in such areas as threatened species, threatened ecological communities and abatement of threatening processes, listing under the EPBC Act achieves recognition and some control over further destruction, but does little to aid recovery.

Increased regulation of clearing has been largely driven by States and Territories, and the EPBC Act has had little influence on this. Clearing (outside urban areas) is now less significant as a threatening process than decline in the quality of vegetation and species loss caused by processes such as salinity, erosion, altered fire regimes, invasive species (introduced plants, animals and pathogens such as *Phytophthora cinnamomi* dieback) and grazing. Regulation alone will not achieve biodiversity conservation goals. More attention is required to the integration and improved coordination of programs at Commonwealth, State and local levels targeting community education, planning, enhancing the National Reserve System and improving its management, off reserve conservation, direct investment, land acquisition and financial incentives. This would be complementary to both Commonwealth and State regulatory regimes.

### *Funding*

The Commonwealth and State governments have cooperated over many years in the delivery of programs that are focused on biodiversity conservation, sustainable agriculture, water quality management and coastal management.

In 1997 the Commonwealth brought its assistance programs in sustainable agriculture, biodiversity conservation, coastal management and wetland conservation together under the umbrella of the Natural Heritage Trust (NHT). Prior to this the Commonwealth had a number of programs aimed at national NRM priorities, and invested directly with the States under programs such as for threatened species recovery.

In 2002, the Commonwealth introduced an extension to the NHT, known as NHT2. Along with the NHT2 the Commonwealth introduced the National Action Plan for Salinity and Water Quality. This was a major change from the NHT in that the Commonwealth now required the delivery and strategic planning for its funding assistance to be delivered through regional community-based groups. As a result of this, six regional natural resource management (NRM) groups were formally recognised in Western Australia covering the Avon, South Coast, South West, Swan, Northern Agricultural and Rangelands regions. Western Australia signed a bilateral agreement with the Commonwealth for NHT2 in December 2002.

This major change resulted in regional NRM groups establishing themselves as delivery organisations for NRM outcomes, with varying levels of alignment with State and national priorities. In addition, the Commonwealth also established Envirofund, a program which offered reasonable small grants to community-based groups often with the aim of capacity building. Consequently, the Commonwealth has pursued in recent years much of the targets necessary to address national priorities, such as EPBC Act listed threatened species and ecological communities, Ramsar sites, listed migratory species and World Heritage properties, through regional NRM groups and via special purpose grants.

This approach has resulted in a significant drop in the level of direct funding to well coordinated and targeted State agency recovery programs that aim to address the highest priorities for threatened species and ecological communities to meet both State and national priorities. It has largely been replaced by investment through regional NRM strategies and investment plans that in some instances omitted requirements to manage important national assets such as World Heritage properties. A general concern is that NHT1 and NHT2 investments from the Commonwealth were through short term programs, of up to five years, and much of it has been *ad hoc* and at an insufficient scale to address environmental protection and biodiversity conservation issues.

The Commonwealth should make funding contributions through dedicated programs that focus on national priorities and assets, and in a systematic way that provides certainty over a reasonable number of years to address national NRM priorities, rather than the *ad hoc* and inconsistent support given through NHT and programs such as EnviroFund.

There is also a need to put in place an effective evaluation process following the completion of past NHT projects, to determine if they have adequately dealt with issues such as decline and extinction, and apply lessons learnt as a result of the evaluation process for future programs.

While it is acknowledged that Caring for our Country is being established to replace NHT2, and is moving towards a more structured and business-like approach to meeting national priorities, there is still uncertainty in long-term funding and it is too early to comment on the effectiveness of the new direction that is being taken.

### **Regional Forest Agreements**

Under section 38 of the EPBC Act, certain operations undertaken in accordance with a Regional Forest Agreement do not require assessment under Part 3 of the EPBC Act. This is an important provision of the EPBC Act, which recognises that the Regional Forest Agreements, and the Comprehensive Regional Assessments conducted as part of the process, provide at least equivalent protection to the EPBC Act itself.

Subsequent to signing of the Regional Forest Agreement for the South-West Forest Region of Western Australia, the protection of old-growth forests and WA's 2004 Forest Management Plan have provided protection of forest species and habitats beyond the level that was achieved in the Regional Forest Agreement. Western Australia supports section 38 of the EPBC Act in respect of Part 3 of the Act not applying to certain operations (including forestry, mining and petroleum (including geothermal) development interests) undertaken in accordance with a Regional Forest Agreement.

Any changes to section 38 would undermine the Regional Forest Agreement process and add significantly to the regulatory and compliance burden through unnecessary duplication of assessment and policy frameworks. Such a move would also be inconsistent with the Australian Government policy objectives (outlined in the Terms of Reference for the EPBC independent review) to work in partnership with States and Territories in an effective federal arrangement, to reduce and simplify the regulatory burden, and the pursuit of the most efficient and effective way of achieving outcomes.

## **Accreditation of fisheries**

The Department of Fisheries (DoF) has worked closely with DEWHA over the past 8 years to accredit 35 Western Australian fisheries under Parts 13 and 13A of the EPBC Act. While ecologically sustainable development (ESD) initiatives were being progressed under the *Fish Resources Management Act 1994*, accreditation under the EPBC Act provided the impetus to pursue and subsequently introduce changes in fisheries more quickly than would otherwise have been the case. It also facilitated research funding for ESD related projects.

As a result of experiences with the accreditation process for fisheries, there is a better understanding of the practical application of the EPBC Act and thus the areas in which the process and subsequent EPBC Act may be improved in the future. The areas identified are:

- Assessment process
- Funding
- Listing of marine protected species
- Interactions with marine protected/listed species.

### *Assessment process*

Western Australia has found many positives to the accreditation process for fisheries under the EPBC Act but also considers that there are areas for improvement. The current strategy of taking a more risk-based approach to the assessment process needs to be maintained to ensure that it is efficient and cost effective.

The objects of a revised EPBC Act should explicitly recognise that the principles of ESD include social and economic factors as it is important that any environmental assessment and accreditation process for fisheries take into account its impacts on social and economic outcomes.

### *Funding*

The cost (time and resources) required to support the EPBC Act accreditation process for each fishery operating in waters managed by the DoF is significant and has led to considerable new costs for fisheries and for Western Australia. The additional costs are of particular concern for fisheries which are considered to be minor (i.e. low economic value, low number of operators and minimal ecological risks). This again highlights the need for the process to be risk-based and allow for a simple accreditation process for those fisheries where the ecological risks are generally low.

While the accreditation process enables these fisheries to continue exporting, there are no other tangible benefits for the fisheries that have successfully been accredited. The costs and benefits of the accreditation process need to be addressed in the future. It would not only be helpful if funding was provided by the Commonwealth to support the reviews but also for it to support the development of some form of accreditation which could enable the exporters to use the outcomes of these assessments as a marketing tool.

### *Listing of marine protected species*

The Commonwealth listing of marine protected species should be consistent with State and Territory listings and take into account the information and knowledge which State and Territory agencies have acquired on the status of the species. In addition, the EPBC Act should incorporate a periodical review of the status of all listed species. This approach would allow for new information/knowledge to be applied to the listings and recognise where recovery strategies have been successful with the delisting of a species or resulting in a decreased risk level.

### *Interactions with marine protected/listed species*

The ESD reporting requirements for interactions with marine protected species need clarification as “interactions” may be trivial, for example a seabird landing on a fishing boat. There is a need to define interaction so that it is meaningful in respect to impacts on a species’ survival.

In addition, the measures defined under the EPBC Act for the reporting of an interaction with a protected species need to be refined and a more effective reporting process for interactions developed. Currently, any interaction with a protected/listed species must be reported within seven days to the Commonwealth via a hotline number. This reporting process is not practical for fisheries, it duplicates existing reporting requirements required by the DoF, and none of the information given to the hotline is used. Western Australia therefore considers that this requirement should be removed for managed fisheries.

### **National Heritage List**

The approach articulated when the EPBC Act was being drafted was that there would be a list of only the most important areas of Australia’s heritage rather than a repeat of the Register of the National Estate’s 15,000 or so places. However, the list is showing signs of developing, to some extent, in an *ad hoc* way in response to third party nominations, rather than through strategic assessments that select the most important places. The annual priority assessment list (detailed under sections 324E to 324JH), which takes account of public nominations, has the potential to overload the assessment process at the expense of a thorough strategic assessment.

Under the EPBC Act, the Australian Heritage Council is required to consult owners and occupiers as to whether places may have National Heritage values and to allow at least 20 business days for comment. This timeframe is not sufficient in many situations, especially where there can be significant issues in terms of land use and access to mineral and other resources. The Council is required to assess places on the finalised priority assessment list within the time limits set by the list (sections 324 JH and 324 JI). A more flexible and practical approach in this regard is recommended.

A program of statewide strategic assessments of potential National Heritage places should be funded in accordance with section 324ZA(6) of the EPBC Act.

Western Australia is concerned that the current approach will lead to uncertainty and complexity in the selection process, and could detract from comprehensive assessments of strategic heritage areas identified by the State and Commonwealth Governments. It is important that the assessment of such nominations is undertaken thoroughly to ensure sectoral and jurisdictional interests are appropriately considered.

## **World Heritage**

Section 324 of the EPBC Act states that *'the Commonwealth may give financial or other assistance for the protection and conservation of a declared World Heritage property...'*. The State is supportive of Commonwealth assistance in the form of ongoing or systematic programs, particularly where they help to give effect to additional responsibilities attached to meeting international obligations. Commonwealth funding for WA World Heritage properties has declined markedly under NHT2, and it would be appropriate to reinstate a dedicated funding program.

## **Management of wetlands listed under the Ramsar Convention**

Section 333(2) of the EPBC Act states in respect of Ramsar wetlands that *"[t]he Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory."*

Western Australia works in partnership with the Australian Government, and is reliant on the Australian Government actively fulfilling its responsibilities under the Ramsar Convention. DEC, the Western Australian agency charged with the responsibility for management of Ramsar wetlands, also relies to some extent on Commonwealth funding assistance for this.

Western Australia has a strong track record of supporting the Australian Government in the implementation of the Ramsar Convention. In Western Australia, the *State Wetlands Conservation Policy 1997* sets the overarching framework for the State Government's approach to wetland conservation and identifies DEC as being responsible for *"overseeing the implementation of international wetland and migratory wildlife agreements"*.

DEC manages those Ramsar sites that are within conservation reserves established under the *Conservation and Land Management Act 1984* (CALM Act). Statutory management plans are prepared for these sites. The priority given to developing management plans for Ramsar sites on conservation reserves is determined taking into account Statewide (including non-Ramsar) needs.

Until recently, there has not been a nationally agreed methodology for Ramsar wetland condition reporting. This has been a significant concern and a key reason precluding reporting on the changing character of Ramsar sites. DEC has been a leader in developing case studies of ecological character descriptions (ECD) for Ramsar sites. The ECDs provide a basis for monitoring wetland condition and reporting changes in ecological character at the national level.

The NHT2 Commonwealth-State Bilateral Agreement contained agreement by Western Australia to deliver management actions for Ramsar sites contingent on cooperation and assistance from the Australian Government. DEC has been active in its efforts to source funding to fulfil its obligations for management of Ramsar sites. While the Australian Government has not provided significant assistance in wetland planning and management for several years prior to 2006, renewed interest in the past two years has resulted in significant progress and assistance as outlined above.

Further NHT2 funding has been provided for some Ramsar sites but this has been on an ad hoc basis, for example funding for Lake Warden, near Esperance, through the South Coast Natural Resource Management group.

It is Western Australia's view that the Australian Government has a significant responsibility in providing assistance (including funding) for management planning and management for Ramsar wetlands. It is only recently that the Australian Government has announced that it will collaborate with States in developing Ramsar management guidelines that will include agreed positions on roles, responsibilities and governance of Ramsar sites across Australia.

The EPBC Act has specific provisions to protect Ramsar sites, and the EP Act recognises Ramsar sites as areas of special environmental significance through listing as an environmentally sensitive area in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005. However, Commonwealth support for planning and management of Ramsar sites in WA needs to be better targeted and structured to achieve a long term commitment.

### **Commonwealth Marine Reserves and Commonwealth waters**

A number of potential areas of overlap, duplication or lack of clarity may arise as a result of regulatory requirements for Commonwealth waters and State waters.

#### *Assessment within Commonwealth waters*

There are potential duplication and delays where both State and Commonwealth approvals are required, such as in a proposal that includes activities in Commonwealth offshore jurisdictions and associated infrastructure in State onshore jurisdictions, or where conditions set through EPBC Act assessments are duplicative of requirements of the Commonwealth Petroleum (Submerged Lands)(Management of Environment) Regulations 1999 (PSL(MoE) Regulations).

The Western Australian Department of Mines and Petroleum administers the PSL(MoE) Regulations under delegation from the Commonwealth. The requirements of these regulations include environment plans for construction/installation and for operations and an oil spill contingency plan, which are assessed against appropriate standards applied throughout Australia. The assessment under the EPBC Act often duplicates these requirements, leading to delays, inefficiencies and the possibility of a discrepancy between the outcomes of the two processes.

As there are appropriate mechanisms in place under the Commonwealth's PSL(MoE) Regulations, Western Australia recommends that DEWHA acknowledges the legislative requirements in place and does not set conditions which duplicate requirements of the Regulations. Following formal assessment of documentation submitted under the EPBC Act, DEWHA need not request further sub-plans which duplicate the requirements for Environment Plans under the PSL(MoE) Regulations. This arrangement could substantially reduce workload and duplication, and lead to more consistent outcomes. A possible mechanism to achieve this could be an agreement between DEWHA and the individual designated authorities in Australia.

There is a need for greater communication between DEWHA and relevant State agencies when DEWHA undertakes assessments of projects in Commonwealth waters.

Vessels operating in Commonwealth waters for these projects may spend extended periods in State waters, however, the potential biosecurity risk to State waters does not appear to always be adequately identified and considered in the assessment. There is a need for this process to include timely consultation with relevant State agencies with specific responsibilities for aquatic biosecurity, and which may be affected by such projects in Commonwealth waters.

Lengthy delays, which arise particularly in large and complex projects of strategic importance, create uncertainty.

Western Australia supports the undertaking of strategic assessment at an early stage particularly in sensitive, resource rich areas. Such planning would inform future decisions about conservation of important natural and resource values and ensure more efficient processes. It would promote better planning and environmental outcomes. To ensure the strategic assessment processes are timely and transparent, the relevant agencies within the State and Commonwealth governments need to be identified and processes agreed upon and established. The WA/Commonwealth agreement on the Kimberley region may be a good example of such an intergovernmental agreement.

#### *Marine reserves*

To the greatest possible extent, Commonwealth and State legislation regulating the activities of fishers in Commonwealth marine reserves should be consistent and, where practicable, the Commonwealth's regulations should mirror or recognise those of Western Australia to ensure a seamless approach to management of adjacent waters. This is important, as the boundary between State and Commonwealth waters is difficult for small boat owners to locate.

There is currently an inconsistency between the regulations relating to Commonwealth waters in marine parks and the adjacent State waters. As a result, recreational fishers are inadvertently breaking the law when they cross from State waters into the Commonwealth waters, Ningaloo Marine Park. This situation needs to be addressed under any amendments to the EPBC Act. It would be prudent for the State and Commonwealth agencies to develop an approach of dealing with potential differences in management arrangements and requirements as part of any new or amended legislation.

#### **International Movement of Wildlife**

The requirements relating to the export of flora within the EPBC Act are generally appropriate, however, issues have arisen as a result of resource limitations in DEWHA. As an example, the export of seed is exempt from requiring a permit. This is because with the level of available resources it is not practical to identify the taxon of seed. However, this is a weakness in meeting CITES obligations and provides a loophole.

The existing process for assessing the impacts of invasive species proposed for import into Australia is of concern, as it places the obligation for the preparation of key documentation (draft terms of reference, assessment and reporting on the potential environmental impacts of species proposed for import) on the proponent. The process would be more transparent and the assessment more balanced if a suitably qualified independent person were appointed to prepare these (though paid for by the proponent via DEWHA). The requirements of the assessment should be considered in

the context of the more comprehensive approach which addresses environmental, economic and public safety factors required by Biosecurity Australia and recommended by the Vertebrate Pests Committee's "Guidelines for the Import, Movement and Keeping of Exotic Vertebrates in Australia".

There is a need for improved cooperation and coordination between the Commonwealth and State and Territory agencies in assessment and decision-making processes for the import of live plants and animals. As post-border management is generally the responsibility of States and Territories, the concerns of jurisdictions need to be adequately addressed during DEWHA's assessment of applications. It is critical that a robust scientific analysis of the risks of taxa proposed for live import becoming established as a pest species underpins the assessment and decision-making process.

The process outlined on page 41 of the discussion paper (in particular steps 5 and 6) does not allow for agencies that submit issues in relation to an application to be informed of how the applicant proposes to address the issues or the revised assessment report by the DEWHA, or revise advice in light of additional information.

It is noted that once a taxon of fauna has been approved for import for a specific purpose, it is listed on the potential import list, and subsequent applications for other purposes may then be more readily approved. For example, an application to import a single pet animal of a migrant may facilitate future importation for breeding. One-off special approvals should not result in the amendment of the import list unless the assessment is based on broader case scenarios.

The discussion paper raised the question of whether the existing arrangements between the Commonwealth and the States/Territories for managing the domestic movement of exotic species are effective and appropriate. In the particular case of the translocation of ornamental fish across borders, the document "A Strategic Approach to the Management of Ornamental Fish in Australia" identified that the existing regulatory frameworks and management regimes were ineffective and inappropriate. It is proposed that these issues will be addressed and resolved with the development and implementation of a national strategy and with the implementation of new regulatory arrangements by each jurisdiction.

Western Australia also notes that the report from the independent review of Australia's quarantine and biosecurity arrangements has recently been released and this advises that the relevant recommendations arising from this review should be considered in the current review of the EPBC Act. We would encourage that both these documents be considered in the review and its outcomes.

---