

14th December 2012

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

To whom it may concern,

Re: Comments on the effectiveness of threatened species and ecological communities' protection in Australia

The Mary River Catchment Coordination Association (MRCCC) is an active Integrated Catchment Management organisation with a committee representing 25 government, industry and community sectors within the Mary Catchment. Since its inception in the mid-1990's, the MRCCC has participated actively in natural resource management planning and environmental planning issues in the Mary catchment, endeavouring to remain abreast of the continually changing regulatory framework governing these matters, at three levels of government. In recent years the MRCCC has been actively involved in the EIS and assessment process associated with a number of projects in the Mary River Catchment which have been assessed under the arrangements in the existing EPBC assessment bilateral with Queensland. The MRCCC contributed to the 2007 Senate Inquiry into Water Supply Options for South East Queensland, and both the Senate and the Ministerially commissioned inquiries into the operation of the EPBC Act, in 2008 and 2009.

The MRCCC has a long history of working cooperatively with both the federal and state governments on issues relative to achieving our goal of a productive and sustainable catchment. As part of its role, the MRCCC has actively encouraged and facilitated the protection and conservation of biodiversity within the catchment including actions for the recovery of listed threatened species and ecological communities.

The MRCCC contributed to the 2009 Independent Review of the EPBC Act (submission No 45) and commented on the Bilateral agreement between the State of Queensland and the Commonwealth under this Act. The MRCCC staff have been involved in the development and implementation of threatened species recovery plans and have been involved in the environmental monitoring of the impacts of projects on listed species and ecological communities. It is from this background that the MRCCC would like to offer comments to the Senate within the terms of reference for this enquiry.

The MRCCC requests that the earlier comments provided in our submission to the Independent Review (submission No 45) to be considered as part of this inquiry. In addition we would like to offer the following comments to the specific terms of reference of this inquiry.

Yours sincerely,

Margaret Thompson
Secretary, MRCCC

*The MRCCC gratefully acknowledges the support of
The Sunshine Coast Regional Council, Gympie Regional Council and Fraser Coast Regional Council,
the Burnett Mary Regional Group, the Department of Agriculture, Fisheries and Forestry, the Department of Sustainability,
Environment, Water, Populations and Communities, the Department of Main Roads, the Gambling Community Benefit Fund,
and landholders throughout the Mary Catchment.*

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(a) Management of key threats to listed species and ecological communities;

Many of the key threats to listed species and ecological communities could be described under the heading of feral pests (weeds, pathogens, competitors, predators). In recent years the funding available for research development and onground management actions required to mitigate the impact of such pests on threatened species and communities has fallen well short of the amount required. For example, a number of significant environmental weeds are recognised as Weeds of National Significance (WONS) but the amount of funding available for implementing the national strategies for these individual weeds has been cut. Within our catchment, significant aquatic and riparian weeds are a major threatening process to endangered species and ecological communities.

(b) Development and implementation of recovery plans;

Recovery plans for species in our area provide valuable resources for MRCCC activities and help with identification of actions. In our experience the process of developing recovery plans is greatly reliant on the good will of the participants and in need of additional funding to ensure that they can be completed in a timely manner with efficient coordination across levels of government and scientific organisations. Once a recovery plan is in place there is no smooth or automatic process for looking at how to implement the recovery actions. A clear path for funding implementation of recovery plans, including for example, a specific category within the Caring for Country application process, would help address this issue.

(c) Management of critical habitat across all land tenures;

One of the strengths of community organisations such as Landcare and the MRCCC is the network of contacts with private landholders and between private landholders within the catchment. Where important or essential habitat for the recovery of species needs to be managed in a connected way, including protection on private land, these community based groups have a huge advantage in changing management practices on that land to protect the critical habitat. This should be recognised as a key part of conserving habitat.

(d) Regulatory and funding arrangements at all levels of government;

The MRCCC would like to see more coordination between the Federal and State lists of threatened species and also the implementation of recovery actions.

(e) Timeliness and risk management within the listings processes;

MRCCC has no comments regarding this item.

(f) The historical record of state and territory governments on these matters; and

The MRCCC is supportive of an efficient and coordinated assessment process. We would like to reiterate the need for independent Federal assessment. We therefore strongly support maintaining an independent role for the Federal Minister. This is detailed in the attached submission to the bilateral agreement.

(g) Any other related matter.

One of the key scientific gaps in the recovery of listed species is often simple information about the status of the population. A large amount of effort is invested in surveys of species as part of the assessment process of individual projects. Unfortunately the data collected during the preparation of environmental impact assessments are not automatically incorporated into species profiles and the recovery and threat (SPRAT) database held by the Federal Government. The MRCCC thinks it would be sensible to ensure that all species records collected as part of the assessment process for an Environmental Impacts Study under the EPBC Act are automatically incorporated into the SPRAT database.



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Winners of the 2007 Queensland Rivercare Award

18th December 2008

Secretariat
Independent review of the EPBC Act 1999
GPO Box 787
Canberra ACT 2601
Australia

To whom it may concern,

Submission to the Independent review of the *Environment Protection and Biodiversity Conservation Act 1999*

The Mary River Catchment Coordinating Committee made a considered submission to the recent Senate Inquiry into the EPBC act. We would like the matters raised in that submission to also be considered as part of the independent review of the Act which has been commissioned by the Federal Minister. A copy of the MRCCC senate submission is attached.

Please contact us if you require any more information. We would be very happy to assist in the review process.

Yours sincerely,

Paul Marshall
Chair
MRCCC

*The MRCCC gratefully acknowledges the support of
The Sunshine Coast Regional Council, Gympie Regional Council and Fraser Coast Regional Council,
the Burnett Mary Regional Group, the National Landcare Programme, the Australian Government Envirofund,
the Department of Main Roads, the Worldwide Fund for Nature, Powerlink
and landholders throughout the Mary Catchment.*

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The Secretary,
Senate Standing Committee on Environment,
Communications and the Arts,
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Submission to the Senate inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*

The Mary River Catchment Coordination Association is a very active Integrated Catchment Management organization with a committee representing 25 government, industry and community sectors within the Mary Catchment (the MRCCC). The MRCCC has been nationally recognized for the development and ongoing successful implementation of the Mary Catchment Strategy and the Mary River and Tributaries Rehabilitation Plan. These documents outline a 50 year strategic vision and planning framework for a creating a sustainable and productive future for the river system and were developed in active partnership with the Queensland Government, local communities and industry. Throughout a long history of working with the national and international scientific community the MRCCC has amassed considerable technical and scientific knowledge about the Mary Catchment, and has built a strong network of active community support throughout the region. It is from this background the MRCCC wishes to make some brief comments on the following issues as a contribution to the inquiry.

Assessment of cumulative impacts

By their nature, groups like the MRCCC have the ability to observe and monitor the cumulative environmental impacts of a large number of developments throughout the catchment over a long period of time. In contrast, each new action in the catchment is assessed under local, State and Federal environmental laws as a separate project.

In our experience, the cumulative impacts which result from a range of actions undertaken by a number of different proponents over a period of time are not handled very well by the EPBC Act as it currently operates. Proponents of very large projects are aware of this, and tend to split large projects with large impacts into a number of smaller actions for assessment purposes. An example from the Mary River is the suite of new water infrastructure developments which propose to source urban water from the catchment. These are clearly outlined in the SEQ water strategy as a suite of actions which are intrinsically interconnected. The economic and water supply case for them is presented as an integrated whole. However, the assessment of their environmental impact is being conducted in a piecemeal fashion, as a series of separate actions and assessments under the Act.

Role of community-based groups

Community-based action is the essential ingredient for achieving on-ground change in the management of Australia's natural resources. The amount of volunteer and landholder time, effort and capital contribution, and the willingness of professional staff to work passionately for comparatively low wages and little or no job security is not adequately recognized in the formulation of policy. The ability to deliver strategy and policy outcomes which are in line with the intent of the EPBC act is entirely dependent upon maintaining a direct, long-term, personal network of connections with land managers and the community in general. Maintaining stable community-based organizations at the local level is the best way of achieving this critical link.

Compliance with and enforcement of approval conditions

We would like to comment on the approval conditions placed on the Paradise Dam on the Burnett River in Queensland. This is relevant to our catchment because it is the last project undertaken by the effective proponents of the proposed dam at Traveston Crossing in the Mary, and it is being referred to as a model for many of the mitigation measures proposed. A number of State imposed conditions were placed on the approval of the project, along with several additional Commonwealth approval conditions. A federal audit has been conducted on this project which demonstrated clear non-compliance with a number of the EPBC approval conditions, and the creation of a new determination of 'partial compliance'.

Although several of the State-imposed conditions have not also been effectively implemented, these were not considered at all in the Federal compliance audit. It would be reasonable to assume that the federal conditions were placed in addition to the assumption that the State conditions were in place.

In spite of the penalties applicable under the act for such non-compliance, no punitive action has been taken under the act against this proponent. This sends a clear message to proponents of similar projects in the future that the EPBC Act simply has no real teeth or consequences when it comes to enforcement.

Ongoing maintenance, support and renewal of recovery plans

In our catchment, we have observed long delays in the renewal of the Mary River Cod Recovery Plan and in the development and implementation of the Lungfish Recovery Plan. Having plans like these in place and up-to date is an important part of ensuring that appropriate action is being taken in the recovery of these EPBC-listed species.

It is also worthwhile noting that newly-identified species are not protected under the Act in any way until their nomination is processed under the Act, which can take a very long time. A case that is relevant to our catchment is the white-faced snapping turtle (*Elseya albagula*).

The long delays in implementing and renewing recovery plans, and the assessment of new listings which may be in need of a plan are perhaps symptomatic of a shortfall in funding to support these aspects of the Act.

Use of bilateral agreements

In general, the assessment of major projects by means of bilateral agreements with the relevant State Government is a sensible procedure, which should lead to efficient use of resources in assessing projects where the State and Federal governments have overlapping jurisdiction and a common interest in furthering the aims of the act. However, in cases where the proponent has strong links to the State Government there is a clear and undeniable conflict of interest in the State Government operating in the simultaneous roles of proponent and assessor under a bilateral agreement.

Projects being delivered under the Queensland State Development and Public Works Organization Act are assessed by the State Coordinator-General as part of the EPBC bilateral agreement. In this case of Queensland Government infrastructure projects, the Coordinator-General is placed in the impossible position of being the person charged with the duty of delivering the project for the state at the same time as holding the responsibility for the assessment of the project under the EPBC Act on behalf of the Commonwealth. We believe that this creates an obvious and untenable conflict of interest.

Access to information

We have noticed a decline in access to public information that is important to monitoring and managing the impacts on MNES in our catchment. Two specific cases are access to recorded fish-kill reports provided by the Queensland EPA, (which was removed from public access in September 2006), and access to scientific quality daily stream flow data at a number of critical locations in the river (eg. the Mary River Barrage), once operation of those gauging facilities was handed over to a government-owned corporation.

Losing access to information like this makes it more difficult for community-based organizations such as ours to monitor impacts on MNES, even though we have a direct interest and an active role in the sustainable management of the catchment. It has also become increasingly difficult to access State Government technical reports on issues that are of direct relevance to community stakeholders in the catchment, and directly relate to monitoring the sustainability of management actions in the catchment.

We hope that these brief comments can contribute to the improved operation of this important Act in the future.

Jim Buchanan
Deputy Chair
Mary River Catchment Coordinating Committee



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**CATCHMENT
COORDINATING COMMITTEE**

Winners of the 2007 Queensland Rivercare Award

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MRCCC comments on the draft EPBC Assessment Bilateral with the State of Queensland¹

The Mary River Catchment Coordinating Association (MRCCC) is a very active Integrated Catchment Management organisation with a committee representing 22 government, industry and community sectors within the Mary Catchment. Since its inception in the mid-1990's, the MRCCC has participated actively in natural resource management planning and environmental planning issues in the Mary catchment, endeavouring to remain abreast of the continually changing regulatory framework governing these matters, at three levels of government. In recent years the MRCCC has been actively involved in the EIS and assessment process associated with a number of projects in the Mary River Catchment which have been, or are currently being assessed under the arrangements in the existing EPBC assessment bilateral with Queensland. The MRCCC contributed to the 2007 Senate Inquiry into Water Supply Options for South East Queensland, and both the Senate and the Ministerially commissioned inquiries into the operation of the EPBC Act, in 2008 and 2009. It is from this background that these comments are made about the bilateral assessment agreement with Queensland. The MRCCC maintains that addressing these issues with a re-formulation of the bilateral agreement would improve the ability of the EPBC Act to achieve its stated objectives within Queensland.

The four main issues of concern to the MRCCC are:

- Recent and anticipated changes to the Queensland Acts which provide the accredited assessment procedure for the bilateral agreement.
- An inherent conflict of interest in the role of the Queensland Co-ordinator General in the assessment of significant projects under the State Development and Public Works Organisation Act for which the State of Queensland is the effective proponent.
- Ineffective compliance monitoring under the current bilateral arrangement.
- Apparent conflict between Queensland regulations and the intent of the assessment procedure under the EPBC act.

This submission briefly discusses the MRCCC's concerns with each of these issues. The MRCCC requests that the Commonwealth re-formulates the bilateral assessment agreement with the State of Queensland with these considerations in mind.

**Paul Marshall
(Chairman)
19/06/2009**

¹ ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 Agreement between the Commonwealth of Australia and the State of Queensland relating to Environmental Impact Assessment

*The MRCCC gratefully acknowledges the support of
The Sunshine Coast Council, Gympie Regional Council and Fraser Coast Regional Council,
the Burnett Mary Regional Group, Caring for our Country, the Department of Environment, Water, Heritage and the Arts,
the Australian Government Envirofund, Department of Agriculture, Fisheries and Forestry,
the Department of Main Roads, the Gambling Community Benefit Fund, and Powerlink.*

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Recent and anticipated changes to relevant Queensland Acts.

Since the signing of the current bilateral assessment agreement, Queensland has substantially changed several aspects of the State Development and Public Works Organisation Act (SDPWO) and the Integrated Planning Act (IPA). The Queensland cabinet has also recently passed a new draft bill (*Sustainable Planning Bill 2009*) which is anticipated to result in sweeping changes to the assessment of development proposals once it passes through parliament by replacing or changing the operation of the Integrated Planning Act. Given the current structure of Queensland Parliament, it is likely that most aspects of the draft bill will become law if that is the intent of the current cabinet.

In summary, the recent and forecast future changes have the general effect of reducing the opportunities for public comment on development proposals, and reducing the opportunities available for review and appeal against decisions made. In particular, the powers granted to the position of the Queensland Coordinator-General to intervene in the assessment process have been greatly expanded.

The MRCCC recommends that the Commonwealth considers all these aspects of the recent and proposed future operation of Queensland's specific planning laws to ensure that the intent of the EPBC Act is met, particularly the objects of the Act which relate directly to public consultation. This is essential before re-entering into an agreement which accredits the environmental assessment procedures used under these highly modified and/or new state acts and regulations. Special recognition should be given to the limited opportunities for parliamentary review of State cabinet decisions within the structure of Queensland's parliament, and the unique operation of the SDPWO Act and the position of Coordinator-General within the structure of governance in Queensland.

Inherent conflict of interest in the position of Coordinator-General

The State Coordinator-General is responsible for the environmental assessment of state significant projects under the SDPWO Act, which includes the accredited assessment under the EPBC Act (under the assessment bilateral) for projects that have significant impacts on Matters of National Environmental Significance (MNES). However, in projects where the proponent is effectively the State Government itself, this places the Coordinator-General in the position of being simultaneously the project proponent (effectively), and the Commonwealth assessor under the EPBC Act. This conflict partly arises from the tradition of the role of Coordinator-General being exercised by the person who is in the position of director-general of the Department of Infrastructure and Planning. There is also a past history in Queensland of the role of the Coordinator-General being assigned to individuals directly recruited from outside government by the Premier of the day.

In the case of the proposed Traveston Crossing Dam, for example, the nominal proponent is Queensland Water Infrastructure PL, a wholly state government-owned corporation created for the sole purpose of gaining the approvals required for the construction of a number of new water infrastructure projects in South East Queensland. QWI was created as a 'special vehicle' under the administrative structure of the Department of Infrastructure, the department that is directed by the same person who acts in the role of Coordinator-General under the SDPWO Act. Even if the individual acting in the role of Coordinator-General at the time of assessment is capable of acting absolutely independently in the two simultaneous roles of being the assessor on behalf of the Commonwealth and effective proponent on behalf of the State Government, it is an untenable burden to place on that individual. It is also very unlikely to convince the public that the assessment is not unduly influenced by this conflict of interest.

The MRCCC recommends that the bilateral agreement is modified to account for the comparatively rare, but very important situations in which the State of Queensland is the effective proponent (albeit via the mechanism of a nominally separate government-owned corporation) of an action which is being assessed or monitored under the EPBC act by the State of Queensland on behalf of the Commonwealth. In these situations, the significant impacts on MNES should automatically be subject to a completely independent assessment procedure, possibly via public inquiry.

There are important local examples in our recent experience where this potential conflict-of-interest situation has arisen, these being the assessment of proposed Traveston Crossing Dam and the associated Northern Pipeline Interconnector. To date, the bilateral agreement has not yielded satisfactory environmental or social results, nor does it seem to have reduced costs or increased the administrative efficiencies for any of the parties involved, including the general public and all three levels of Government.

Ineffective compliance monitoring under the current bilateral arrangement.

In a similar situation, the bilateral assessment of projects for which the State of Queensland is the proponent has not produced desirable outcomes in administrative efficiency or environmental and social outcomes. The bilateral arrangement for monitoring compliance with approval conditions placed on projects for which the State of Queensland is the effective proponent, has also produced undesirable social, environmental and administrative outcomes.

The example of the Paradise Dam on the Burnett River is one where the general public has been forced to take action in the Federal Court in an attempt to achieve appropriate compliance by a wholly State-owned corporation with the EPBC approval conditions placed on the construction and operation of the dam. This is an undesirable administrative and financial outcome by any measure and constitutes a terrible waste of time, money and effort for all concerned. This could have been avoided had compliance with the approval conditions been independently monitored and assessed during the design, construction and early operation of the dam. Under the bilateral agreement, the responsibility for monitoring and enforcing compliance was left in the hands of the Queensland government, who had a direct political and financial conflict of interest in seeing the project completed as quickly and as inexpensively as possible, with a design seemingly optimised for economic performance rather than strict compliance with the intent of the EPBC conditions placed on the approval.

The MRCCC recommends that the bilateral agreement be amended in such a way that the State of Queensland is not placed in a situation where it has a conflict of interest by acting as both the effective economic proponent of a project and the sole party responsible for monitoring and assessing the compliance of the project with the EPBC approval conditions placed on it.

Apparent conflict between Queensland regulations and the intent of the assessment procedure under the EPBC act.

There seems to be tension and a potential conflict between state and federal legislation, which affects projects with significant impacts on MNES in the Mary Catchment.

The Northern Pipeline Interconnector and the proposed Traveston Crossing dam are currently undergoing assessment under the EPBC bilateral agreement with Queensland. Following these assessment processes it is open to the Federal Minister not to approve these projects under the EPBC Act. However, it does not seem possible for the Queensland Coordinator-General not to approve these projects under Queensland law, because the Coordinator-General has been specifically directed to construct these projects by Section 8 of the Water Regulations 2002, where these projects are specifically listed in paragraph 82 of those regulations.

In the negotiation of a new EPBC bilateral agreement with the State of Queensland, it would be desirable for the agreement to preclude this sort of conflict between State and Federal legislation in the future, and deal with any these and other such inconsistencies that exist at present.