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17 October 2013

The Hon. Greg Hunt MP  
Minister for the Environment  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600  
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Dear Minister,

**'One Stop Shop' for Environmental Approvals under the *Environment Protection and Biodiversity Conservation Act 1999*; Great Barrier Reef Strategic Assessments**

Firstly, congratulations on your re-election and further congratulations on your Ministerial appointment. We wish you all the best with your important portfolio.

Today, we write to express our concerns with the Federal Government's proposed 'one stop shop' for environmental approvals in Queensland and also write about the Strategic Assessments relevant to the Great Barrier Reef.

We respectfully request an opportunity to meet with you or your Department to discuss these issues, detailed below.

**Who we are**

The Environmental Defenders Offices of Queensland and Northern Queensland are non-profit, non-government community legal centres which help disadvantaged people both rural and urban understand and access their legal rights to protect the environment. We also use our experience in interpreting environmental laws to deliver community legal education and inform law reform.<sup>1</sup>

**Summary of our concerns**

After careful consideration, we hold the view that there is not a good case for delegation of Federal Government approvals decisions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) to Queensland. We were however encouraged to hear you are seeking to maintain high environmental standards with the one stop shop. Nevertheless, we wish to raise some major concerns as follows which if not addressed will compromise environmental outcomes and also business certainty in Queensland:

1. Conflict of interest issues involving Queensland's Coordinator-General for major projects.

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<sup>1</sup> The Australian Network of Environmental Defenders Offices has been actively contributing to the discussions relating to reform Australia's environmental law framework, including the EPBC Act; see EDO submissions at <http://www.edo.org.au/policy/policy.html>

2. Maintaining the checks and balances that the Federal Government currently provides.
3. Uncertainty, delay and inconsistent environmental outcomes resulting from partial approval delegation

As a result, we do not support the use of an approval bilateral agreement in Queensland. Instead, we believe administrative efficiencies can be gained by improving the existing bilateral assessment arrangements between the Queensland and Federal governments.

In relation to the development of the strategic assessments for the Great Barrier Reef, we suggest maximum public consultation is warranted and should be supplemented by a sustainable development plan as requested by UNESCO.

## **1. Conflict of interest issues involving major projects involving Queensland's Coordinator-General**

### *Conflict of interest*

The Queensland Coordinator-General currently supervises assessment of major projects under the assessment bilateral agreement. There is currently a clear conflict of interest. This is because the main role of Queensland's Coordinator-General is to promote, facilitate and encourage large scale economic developments in Queensland.<sup>2</sup> The Coordinator-General has extremely broad executive power to, amongst other things; declare proposed developments to be 'Coordinated Projects.'

There are currently many Coordinated Projects undergoing environmental impact assessment under the supervision of the Coordinator-General. There is a very clear incentive for the Coordinator-General to ultimately give approval for these projects, despite adverse environmental impacts or even longer term adverse or marginal economic benefits. We are aware of only two such Queensland major projects having ever been refused:

- the Springbrook Naturelink Cableway in 2000 – which posed an unacceptable threat to sensitive ecosystems in World Heritage areas; and
- the Sun Aqua Sea Cage Project in 2004 – where nutrient discharge effects into Moreton Bay could not be adequately addressed.

More recently, in April 2013 a whistle blower from the Coordinator-General's office came forward to say that preliminary approval had been given to a huge coal seam gas (CSG) project despite the Coordinator-General not having all the relevant information on the potential impacts on groundwater.<sup>3</sup> ABC's Four Corners investigated and stated:

*"... The companies didn't supply enough basic information for an informed decision to be made about environmental impacts. Despite this, various government agencies [including the Coordinator General] permitted the developments to go ahead, allowing the companies to submit key information at a later date."*<sup>4</sup>

Handing EPBC Act approval powers for major projects to the Queensland Government will likely mean further rushed approvals that increase the risks of significant environmental damage, and erode public trust in government oversight and decision-making in relation to major projects.

If any delegation of approvals powers to Queensland was to occur, which we do not support, it is paramount that this conflict of interest occurring with the Coordinator-General be avoided.

We also draw your attention to the conflict of interest issues in decisions made on other development applications under the *Sustainable Planning Act 2009* (Qld). This year the decision-making or concurrence role of the Department of Environment and Heritage in relation to development was slashed on matters such as heritage and coastal protection. Instead a single State Assessment and

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<sup>2</sup> <http://www.dsip.qld.gov.au/coordinator-general/>

<sup>3</sup> <http://www.abc.net.au/4corners/stories/2013/04/01/3725150.htm>

<sup>4</sup> <http://www.abc.net.au/4corners/stories/2013/04/01/3725150.htm>

Referral Agency being the State Department of Development, Infrastructure and Planning exercises the decision-making role.

The logical choice for supervision of major projects assessment and for any delegated decision making role under the EPBC Act would be the Queensland Minister for Environment and Heritage Protection, Andrew Powell. This would avoid conflict of interest and would mirror the current decision making under the EPBC Act where the Federal Environment Minister is the decision-maker.

### ***Lack of review rights***

Best practice environmental frameworks require affected communities to be consulted and to participate where there are environmental risks that might affect them. At an international level, principle 10 of the *Rio Declaration of Environment and Development* promotes access to information, public participation, and access to justice in environmental matters. In particular, it states “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Despite this, in Queensland there is no statutory judicial review of a decision by the Coordinator-General.<sup>5</sup>

Queensland’s Environment Minister, Andrew Powell, talking recently to ABC Radio in Brisbane, tried to allay concerns that community participation from the Federal Government’s ‘one stop shop’ policy would be less than it currently is.<sup>6</sup> During the interview, Minister Powell said:

*“There is always judicial review of both our state decisions and those Commonwealth decisions...so checks and balances will remain...”*

However, the Minister was only referring to a small range of State decisions. The Coordinator-General’s decision on Coordinated Projects – arguably the State’s biggest and environmentally risky projects – are not subject to any statutory judicial review at all. While judicial reviews cases are rarely run the potential for such cases to be run by any aggrieved person is part of a robust and accountable decision-making system.

## **2. Maintaining the checks and balances that the Federal Government currently provides**

In January this year, the Australian Network of Environmental Defenders Offices made a submission to the Senate Standing Committees on Environment and Communications setting out why retention of Commonwealth approval powers is vital for environmental protection.<sup>7</sup> We summarise some of the points made in that submission here and with particular reference to Queensland.

### ***Strong history of independence and accountability***

The Federal Government has for a number of years successfully provided an independent check on the power of States to approve projects. Often this has resulted in valuable extra conditions but occasionally projects are refused. For example, the Federal Government refusal of the Traveston Dam in Queensland. The Queensland Government approved the project which would have allowed unacceptable impacts on threatened species like Mary River turtle, the Mary River cod and the lungfish.

### ***No accountability to the international community***

The Queensland Government has no accountability to international organisations or obligations under international treaties. Several ‘matters of national environmental significance’ under the EPBC Act relate to Australia’s international treaty obligations. If project proposals involving these matters are inappropriately dealt with by the Queensland Government under delegated approval powers, the Federal Government would not be appropriately undertaking its leadership role in ensuring Australia

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<sup>5</sup> Section 27AD *State Development and Public Works Organisation Act 1971* (Qld)

<sup>6</sup> Interview with Queensland Environment Minister Powell on ABC Radio available at:

<http://blogs.abc.net.au/queensland/2013/09/the-memorandum-of-understanding.html>

<sup>7</sup> <http://www.edo.org.au/policy/ANEDO-Submission-EPBC-Retaining-Federal-Approval-Powers-Bill-2012.pdf>

meets its obligations to the global community. Any approval bilateral agreement needs to exempt Queensland from considering projects involving such important matters.

### ***Adverse impacts on the Reef***

We wholeheartedly endorse your recent comments reproduced in an article in *The Australian*:

*"The Great Barrier Reef is the number one environmental asset in Australia and you need to look at the reef as a whole."*<sup>8</sup>

We are also pleased that your Government is taking steps to increase funding for the Great Barrier Reef (the 'Reef') and take stronger action on protecting dugong and turtle populations. However, the current Queensland Government has demonstrated that it is not a good steward in protecting the values of the Reef. In response to the 2012 UNESCO Report on the Reef expressing serious concern at the rate of port development on the Reef, the Queensland Premier Campbell Newman replied:

*"We will protect the environment but we are not going to see the economic future of Queensland shut down... We are in the coal business. If you want decent hospitals, schools and police on the beat we all need to understand that."*<sup>9</sup>

We are encouraged by your proposal to retain approval power where the State Government is the proponent of the project, and logically suggest retention should also extend to government owned corporations such as Queensland's port authorities. In addition, approvals for projects that significantly impact the Reef (and in fact other world heritage properties) should not be delegated to the State Government; the Reef is an international treasure of strategic national significance that requires independent oversight by the Federal Government.

### ***Concerns about enforcement***

It is not apparent how enforcement of delegated approvals would operate under any approval bilateral agreement. We have serious concerns that the Queensland Government will not allocate the resources necessary, or have the appropriate attitude, to sufficiently enforce approvals and adequately protect matters of national and international significance.

In order to cut costs, the Queensland Government has greatly reduced the number of public servants in the State's natural resource and environment departments, and is implementing increased self-regulation across a number of environmental industries such as waste, mining and native vegetation clearing. This ongoing and wide sweeping environmental regulatory reform is premised on a net community benefit, but only in terms of a reduction in short term economic costs; it does not adequately consider the health of the natural environment or need for deterrence of unlawful behaviour.

A recent example of the fruit of reduced respect for regulation and staff cuts came earlier this year when the Queensland Government did not even send an officer from the Department of Environment and Heritage to urgently inspect the site of a 240,000 litre oil spill in Western Queensland (purported to be the fourth largest land-based oil spill in Australian history), but merely relied on information provided by the resource company and later a public servant from another Department.<sup>10</sup>

It is essential that the Federal government retain a compliance and enforcement role, with adequate resourcing, in relation to the EPBC Act.

### ***Need for public access to information and involvement***

For an open and accountable system under the EPBC Act, the public needs to play an essential watchdog role to ensure the rule of law is respected. The existing resourcing and enforcement culture

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<sup>8</sup> Graham Lloyd, 'Coalition bid to fix project paralysis', *The Australian*, 23 September 2013

<sup>9</sup> <http://www.news.com.au/national-news/unesco-slams-great-barrier-reef-management-youve-got-eight-months-to-fix-it/story-e6frfkw0-1226381188474>

<sup>10</sup> <http://www.abc.net.au/radionational/programs/breakfast/oil-spill/4747030>

in Queensland highlights the importance of public access to information and public involvement in assessment, review and enforcement processes.

So it is not merely essential to maintain all existing EPBC Act legislative provisions and administrative practices that provide rights to the general public but to look at strengthening those to make the system more robust. For example, often it is impossible for communities to access monitoring documents or plans referred to in EPBC Act approvals. All documents referred to or required by an EPBC approval could be routinely added to the government website to avoid time consuming phone calls and administration in providing access to the public.

Funding for EDOs needs to be increased or at least maintained as EDOs are the only place that rural and urban clients may go to for free legal assistance concerning the EPBC Act in Queensland. This is important for a robust system, the more so if government plans to streamline operations.

### **3. Uncertainty, delay and inconsistent environmental outcomes resulting from partial approval delegation**

If an approval bilateral agreement was finalised, we understand that it is currently proposed for the Federal Government to retain some approval powers where projects involve:

- significant conflicts of interest where a State is the proponent;
- nuclear action;
- international treaties;
- offshore Commonwealth waters;
- world heritage properties; and
- water resources.

We understand and support the reasons for the Federal government retaining approval powers in those areas. What would be the consequence if some approvals were be delegated to Queensland, and some were to remain with the Federal Government? There is a strong chance of inconsistent environmental outcomes, even where approval criteria are sufficiently similar. There is also likely to be further administrative complexities for proponents and governments alike and no reduction in application assessment timelines.

At a State level, we have observed over the years that introduction of a new legislative framework, even one designed to be efficient, can cause serious uncertainty to business as well as the community.

Instead, we contend that a better approach would be to improve the efficiency of existing EPBC Act assessment and approval processes. There would then be no need for approval agreements and no need for the Commonwealth to abdicate its vital role in protecting the environment in the national interest.

Further, it is important to scrutinise claims by industry that delays are all the government's fault: often proponents delay steps in assessments for commercial reasons or make errors in the referral that is lodged with the Federal government but refuse to acknowledge responsibility.

#### **Strategic Assessments – need for maximum consultation**

The strategic assessments for the Great Barrier Reef and coastal zone is meant to thoroughly review the impacts of classes of action and lead towards a sustainable future for the Reef. We strongly advocate for the Federal Government to engage in maximum public consultation in the development and finalisation of the assessments to achieve the highest quality outcome.

Even if comprehensive strategic assessments are developed, we are concerned that they will not go far enough in mitigating damage to the Reef. We understand that the Federal Government will also prepare a sustainable development plan as requested by UNESCO. There is a particular need for this because rapidly occurring changes to Queensland environmental and planning legislation are demoting

the importance of environmental considerations, and reducing public participation rates. Some of these changes include:

- reduced power for the Queensland Department of Environment and Heritage Protection with introduction of the single assessment and referral agency;
- a proposed single State Planning Policy that includes ambiguous environmental criteria;
- a proposed major overhaul of planning laws to refocus development on economic benefits and away from long accepted ecologically sustainable development; and
- the proposed limiting of public participation rights with respect to national park management plans.

**Request for meeting to discuss concerns**

We note that Federal Cabinet has now considered a draft memorandum of understanding that you have signed with Queensland Minister for the Environment and Heritage Protection, Andrew Powell.

We would be grateful if you could please provide a copy of the memorandum and an opportunity to constructively discuss the proposal with yourself or your Department before any such final agreement is signed.

Yours faithfully  
Environmental Defenders Office (Qld) Inc



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