

## OVERVIEW

The independent review of the *Environment Protection and Conservation Act 1999* (EPBC Act) welcomes your submissions in response to the discussion paper.

## SUBMISSIONS INSTRUCTIONS

Submissions are due by **5pm (AEST) Friday 17 April 2020**. Please contact the EPBC Act Review Secretariat regarding late submissions.

**All submissions that include this cover sheet will be considered by the review.** You are **required to answer Question 1**, all other questions are optional.

Submissions should be sent to:

Email: [epbcreview@environment.gov.au](mailto:epbcreview@environment.gov.au)

Post: GPO Box 787

Canberra ACT 2601

Australia

## PUBLISHING SUBMISSIONS AND PRIVACY (REQUIRED)

Unless you indicate that your contribution is confidential, or the review considers that your contribution is offensive, potentially defamatory or includes irrelevant or personal information, your contribution will be published on the review website along with your name or organisation. Your submission may be referred to, or quoted from in review reports.

Before making a submission, please read the information on how your privacy will be protected and how the information that you provide will be treated. The Department of Environment and Energy's Privacy Policy ([www.environment.gov.au/privacy-policy](http://www.environment.gov.au/privacy-policy)) contains information about how to access or correct your personal information or make a complaint about a breach of the Australian Privacy Principles.

The review is committed to treating confidential information responsibly and in accordance with the law. In some circumstances, the review may be legally required to produce confidential information. Any request made under the Freedom of Information Act 1982 for access to a submission marked confidential will be determined in accordance with that Act. Please read the [Submissions Guidelines](#) on the review website for more information on how your submission will be handled.

1. Do you give permission for your submission to be published? **(Required)**

☒ Yes – with my name and organisation (if applicable)

☐ Yes – anonymously

☐ No – please keep my submission confidential

#### ABOUT YOU (OPTIONAL)

First name

Lucy

Last name

Graham

2. Are you making this submission as an individual or on behalf of an organisation?

☐ Individual

☒ Organisation

Organisation name:

3. If an organisation, what is its scope?

☒ Local

☐ State

☐ National

☐ International

4. What sector best represents you or your organisation?

☐ Agriculture

☒ Environment

☐ Legal Services

☐ Transport

☐ Academia and  
Research

☐ Financial and  
Professional Services

☐ Manufacturing

☐ Other

Please describe:

☐ Construction

☐ Forestry and Fishing

☐ Mining

☐ Education

☐ Government

☐ Scientific and  
Technical Services

☐ Electricity, Gas,  
Water and Waste  
Services

☐ Health Care and Social  
Services

☐ Tourism

5. Where are you from?

☐ ACT

☐ NSW

☐ NT

☒ QLD

☐ TAS

☐ VIC

☐ SA

☐ WA

☐ Outside Australia

6. Do you identify as Aboriginal or Torres Strait Islander?

*We collect this information so that we can observe levels of engagement with Aboriginal and Torres Strait Islander people and organisations during the review, and to assess whether we need to alter our processes to encourage greater engagement.*

*The Reviewer of the EPBC Act, the Expert Panel and staff from the Department of the Environment and Energy working on the review will be permitted access to this information. Information about individual participants' Indigenous origin status will not be disclosed or published for any reason. However, we may publish the final total numbers or proportions of Indigenous engagement in the review.*

*You can seek access to our records of this information, and ask us to correct the information we hold about you, at any time. For more information, see the Privacy Policy of the Department of the Environment and Energy ([www.environment.gov.au/privacy-policy](http://www.environment.gov.au/privacy-policy)).*

☐ Yes

☒ No

☐ Prefer not to disclose

7. What are your key areas of interest in the EPBC Act?

☐ The objects of the Act

☒ Threatened species

☐ International obligations

☒ Indigenous Australians

☒ Heritage

☒ Matters of National Environmental Significance

☒ Environmental Impact Assessments

☒ Great Barrier Reef

☒ Cumulative impacts

☒ Climate Change

☒ Compliance and enforcement

☐ Decision making

☒ Public participation in decision making

☒ Biodiversity

☒ Conservation

☐ Wildlife trade

☐ Commonwealth National parks

☐ Nuclear

☐ Water

8. Can the EPBC Act Review Secretariat contact you about your submission?

☒ Yes

If Yes, please enter your email: [director@cafneec.org.au](mailto:director@cafneec.org.au)

☐ No

#### LIABILITY

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*The review acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.*

Contact EPBC Act Review at: GPO Box 787 Canberra ACT 2601 | Telephone 1800 803 772 |  
Web [www.epbcactreview.environment.gov.au](http://www.epbcactreview.environment.gov.au)

**To Professor Graeme Samuel AC and the Expert Panel regarding the statutory review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)**

I am writing to you as the Director of the Cairns and Far North Environment Centre. We are the conservation council representing Far North Queensland, a region that reaches from Cardwell to the Torres Strait Islands and from the Gulf of Carpentaria across to Cape York. We host some of Australia's key environmental treasures, including the Wet Tropics World Heritage Area and the Great Barrier Reef World Heritage Area and other wonderful environments found across Cape. These environments play host to an incredible variety of animals that are unique to our area including Tree Kangaroos, Cassowaries and many more rare and threatened species. These ecosystems of outstanding conservation significance define our region, provide the environment in which we live and rely on for our culture and economy.

In 1981 CAFNEC was established as the coordinating environment group to lead important campaigns, including regional advocacy for the successful declaration of a World Heritage Area for the Wet Tropics of Queensland. For the almost 40 years since then, CAFNEC has advocated for our important natural systems. We have been working with the EPBC Act since its inception, meaning we have accumulated 21 years of experience working with the legislation. We know firsthand its achievements and its downfalls. We understand which parts of the legislation have worked, and why we have seen it fail in so many cases as well.

In this submission I will present two case studies that exemplify how the EPBC Act has failed to protect wildlife, and the reforms that we, CAFNEC and the Places You Love Alliance support.

## CASE STUDY - EPBC ACT & SPECTACLED FLYING FOXES

The Act has a primary task of protecting nationally significant species, the objective is

“To provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance”, including the promotion of “**ecologically sustainable development**” and “**conservation of biodiversity**”

SFF are an essential seed disperser and pollinator for the Wet Tropics World Heritage Area. Given their role in sustaining the biodiversity of the Wet Tropics, SFF have been identified to be of national environmental significance. In 2002 SFF were listed as vulnerable due to the threatening processes that were resulting in a concerning population decline. Despite that, the population has continued to dramatically decline. In 2018, after losing 23 000 individuals in a single heatwave, one third of the Australian population, SFF were relisted as endangered.

Examining the management of the Cairns City SFF Camp, a nationally significant roost, demonstrates how The Act has failed to protect SFF. The Act has failed to ensure “ecologically sustainable development” due to the lack of consideration of cumulative impacts. Since the SFF were listed as vulnerable in 2002 there has been ongoing destruction of roost trees, including:

- 2013 approval saw trimming of roosts [see EPBC Act referral [2013/6937]
- 2014 saw the removal of 11 trees from the Novotel section of the city roost [see EPBC Act referral 2014/7296]
- 2016 removal of 16 trees from the Novotel site [see EPBC Act referral 2017/8115].
- 2017 Five trees cleared for the Crystalbrook development [<https://bit.ly/38vzdDL>] (referral 2016/7840)

It could be argued that individually these approvals wouldn't result in a major impact, but cumulatively it has resulted in the destruction of 40 roost trees from a nationally significant camp. The loss of habitat is a significant stress to the species and The Act has failed to protect significant habitat.

We are seeing an ongoing failure of policy tools of The Act to ensure effective management to reverse population decline. The Recovery Plan for SFF has proven to be ineffective. Despite the 2017 commitment to improving recovery plans, it is not yet required to fund a recovery team to implement a recovery plan. Without a funded recovery team who can deliver, measure and monitor the plan, it is not properly implemented and becomes irrelevant as the situation and threats change. In the case of the Recovery Plan for SFF, it refers to out of date population statistics, threats and still treats the species as vulnerable, despite being relisted as endangered in 2019. The Act is failing to reverse the population decline of threatened species.

Finally, The Act does not account for the impacts of climate change. Climate change is putting further stress on our most vulnerable species and in some cases, such as the SFF, these are unprecedented impacts that have major management implications. The heat wave event in November 2018 killed 23 000 SFF, a third of the Australian population. The relisting of the species to be endangered in 2019, did not consider this population decrease, and respected scientist David Westcott indicated that it was likely to now be critically endangered. The lack of consideration of climate change in The Act and the inflexibility of our plans has meant no change in the management of SFF despite a huge loss to the population. The Act has failed to protect the SFF and without significant change we will continue to see the rapid decline of threatened species.



## CASE STUDY - EPBC ACT & THE GREAT BARRIER REEF

We are currently seeing large scale impacts of the failure of these laws, and the ongoing decline of the health of the Great Barrier Reef (GBR) is an example of that. The GBR continues to experience ongoing decline, with mass bleaching occurring back to back, the latest event having occurred as I write to you this week. In 2016 as the first bleaching event occurred, I wrote a short paper on the cumulative impacts to the GBR. The paper highlights the cumulative impacts that the Great Barrier Reef is subjected to, an element which the EPBC Act fails to account for. I have included it here as the second case study highlighting failures of The Act.

*NB: While the Sustainable Ports Development Act 2015 has accounted for these impacts in some manner, the fact that our key federal environmental laws don't account for cumulative impacts means that the health of the reef continues to decline.*

## INTRODUCTION

The consideration of cumulative impacts in marine environments is a growing concern in Natural Resource Management (NRM). The impacts of one industry can be significantly magnified through cumulative impacts of other elements of a system. An example of this is the impacts of the port development industry on the Great Barrier Reef Marine Park (GBR). The following paper will highlight the direct impacts that port development has on the GBR and examine the cumulative impacts that magnify these effects. The cumulative impacts examined are shipping, water quality, fisheries, mining and climate change. Whilst this is not an exhaustive examination of all the cumulative impacts, the areas studied can provide a clear indication of the significance of cumulative impacts. Current NRM paradigms will then be discussed and recommendations for the consideration of cumulative impacts highlighted.

## PORT DEVELOPMENT

### CURRENT STATUS OF PORT DEVELOPMENT IN THE GBR

To fully understand the impacts of the port development industry on the GBR, it is important to understand the number and use of ports in the GBR catchment area. Along the coast of the GBR there are a total of 12 ports. These 12 ports each have a variety of uses including; cargo movement, export of silica sand, sugar, molasses, petrol; coal, zinc, lead, bauxite, copper, oil, ore, fertiliser, movements of cruise ships and general shipping. These ports are focused in large cities and small towns alike, including; Cape Flattery, Cooktown, Cairns, Mourilyan, Lucinda, Townsville, Abbott Point, Mackay, Hay Point, Alma, Gladstone and Bundaberg. According to the Reef 2050 Long-Term Plan, ports in the GBR are responsible for \$40 billion worth of exports annually (Great Barrier Reef Marine Park Authority, 2015). On the other hand, the GBR provides an annual economy of \$5.2 billion and around 70 000 jobs. The 12 ports along the coast of the GBR are servicing a variety of coastal industries and currently contributing a significant amount to the Queensland economy through the export of materials, shipping and cruise ship tourism.

### IMPACTS OF PORT DEVELOPMENT

Port development requires a change in the natural environment and ongoing maintenance of that change. These changes carry environmental impacts for the GBR. According to the Great Barrier Reef Marine Park Authority (GRMPA) there are many potential environmental and social impacts on the GBR from port development (Great Barrier Reef Marine Park Authority, 2013; Table 1). The 25 impacts listed by GRMPA (2013) have highlighted that ports have the *potential* to destroy the ecosystems of the GBR. To prevent this from happening there are control and monitoring processes in place to mitigate the impacts of port development on the GBR. However, with the loss of more than 50% of initial coral cover in the GBR between 1985 and 2012 (De'ath et al. 2012), the effectiveness of these assessments and mitigation techniques are questionable.



Figure 1 Ports that exist in the Great Barrier Reef Region (Eadie et al. 2013)

Table 1 Potential impacts of port development to the GBR (Great Barrier Reef Marine Park Authority 2013)			
<ul style="list-style-type: none"> <li>impacts to local communities from increased dust, noise and lighting</li> <li>introduction of harmful substances and odours</li> <li>loss of amenity</li> <li>aesthetic values for nearby communities</li> <li>socio-cultural impacts</li> </ul>	<ul style="list-style-type: none"> <li>removal of existing habitats such as seagrasses</li> <li>reclamation</li> <li>seabed disturbance</li> <li>cumulative losses of species and habitats which are of environmental significance</li> <li>creation of artificial habitats</li> <li>degradation of water quality</li> <li>burial and smothering of benthic fauna and flora</li> <li>changes to hydrodynamics,</li> </ul>	<ul style="list-style-type: none"> <li>including turbidity and re-suspension which can affect sensitive areas such as seagrasses and corals a long way from dredge disposal grounds</li> <li>changes to coastal hydrology</li> <li>introduction of contaminants</li> <li>transport or resuspension of contaminants</li> <li>increased underwater noise</li> <li>pollution from port waste</li> <li>alteration of coastal processes</li> </ul>	<ul style="list-style-type: none"> <li>injury or mortality to marine wildlife including species that are ecologically significant or are considered threatened, endangered or vulnerable to extinction</li> <li>translocation of pest species</li> <li>impacts from coal dust</li> <li>increase in CO<sub>2</sub> emissions</li> <li>displacement of other Marine Park users, including loss of amenity and safety considerations</li> </ul>



## PRESSURES ON THE REEF

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Port development is not the only factor affecting the reef, there are other factors such as shipping, water quality, fisheries, mining and climate change. In the following analysis, the utility and impact of each factor will be examined independently, and then discussed in the context of cumulative impacts.

### SHIPPING

Along with ports and port development, comes shipping and increased shipping, which has another set of serious impacts on the reef. The number of ships visiting ports has been steadily increasing with 3853 ships visiting ports in 2001, rising to 4487 in 2010 (*Great Barrier Reef Ports Strategy 2012–2022* 2012). Estimates see this number rising to 6100 ships annually by 2022 (*Great Barrier Reef Ports Strategy 2012–2022* 2012). The number of ships travelling through these ports and the associated industry that ships are involved in all have important implications for marine environments and the management of the GBR. As shipping increases, so do the impacts of the shipping industry which include: noise, abrasion from grounding, anchor scarring, propeller turbulence & strikes, introduction of pest species (predominately through ballast water), and leaching of toxic anti-foulants into coastal waters (Grech et.al, 2013). Another important note is that dredging is not restricted to ports — there is the requirement to maintain shipping lanes through the GBR, which have similar impacts to the reef as the dredging that occurs within ports. Shipping, although inherently connected to ports and port development, has its own set of environmental impacts that need to be considered when managing the health of marine environments.

### WATER QUALITY: COASTAL DEVELOPMENT

Water Quality is an important factor in the health of marine environments, and the coastal development occurring in the catchment of the GBR is having notable consequences for ecosystem health. Coastal development, for the purposes of this paper, refers to any development activities in the GBR coastal zone such as infrastructure, housing, farming etc. Haynes et al. (2007) have recognised the three major water quality issues on the GBR as increased nutrients loads, sediment loads and herbicide run off. Hutchings et al. (2005) demonstrated that loss of riparian vegetation on riverbanks as a result of cleared land for farming and housing, has increased sediment loads on the reef. Grazing land in particular has been associated with high levels of erosion and increased sediment load (Hutchings et al. 2005; Taskforce 2015). Sediments on the reef reduce light to corals and seagrass, and also promote algal growths that outcompete other species, changing the structure of normal ecosystems (Hutchings et al. 2005; Taskforce 2015). Herbicides, which are used on local farms, have been shown to enter water ways and affect the ability of reef species to reproduce and function normally (Hutchings et al. 2005; Kennedy et al. 2012). Fertiliser run off from farms has also been linked to higher nutrient levels in the GBR (Taskforce 2015). The higher levels of nutrients are associated with crown of thorns starfish outbreaks which are adversely affecting GBR ecosystems (Taskforce 2015). Coastal development has increased the amount of sediments, nutrients and herbicides reaching the GBR with serious impacts on its health.

### FISHERIES

Fisheries play an important role in the social-ecological systems of coastal environments, but unless managed well can have detrimental impacts on marine environments. The GBR provides a major recreational and commercial fishing industry, with \$57million spent by locals on recreational fishing and \$92.5million in commercial fishing during 2012 (Deloitte Access Economics, 2013). Mapstone et al. (2008) have also shown that commercial fishing efforts have increased by 1.5 times between 1996 and 2003. The 2014 GBR outlook report described the following impacts that fishing has on the GBR: entanglement, death of species of conservation concern, discarded catch, reductions of targeted species and extraction from unprotected spawning aggregation. Each of these impacts can affect the populations and ecosystem function of the GBR, if not managed well.

## CLIMATE CHANGE AND MINING

Climate change and mining are proving to be two major concerns for the ongoing health of the GBR. According to the *Reef 2050 Long Term Sustainability Plan*, the greatest threat to the GBR is climate change. Rising ocean temperatures and ocean acidification were identified as the two main threats to the GBR as a result of climate change (Great Barrier Reef Marine Park Authority, 2015).

Wei et al. (2009) have shown an increasing trend toward ocean acidification in the GBR over the last 60 years, resulting from increased atmospheric CO<sub>2</sub>, which they attribute to the burning of fossil fuels. Ocean acidification on the Great Barrier Reef has been associated with reduced calcification rates of framework builders and lower productivity from the relationship between corals and their symbiotic dinoflagellates (Anthony et al. 2008).

Along with the impact of ocean acidification, rising ocean temperatures seriously affects the resilience of the GBR. The GBRMPAs vulnerability assessment showed that rising sea temperatures were a major cause of predicted coral decline on the GBR, which will affect the overall function of marine ecosystems. Coral bleaching is a significant impact that results from rising sea temperatures. The GBR was subject to three major, severe bleaching events between 1979 and 2016, as a result of high sea surface temperatures (Hughes et al. 2017). During the period February to March 2016, sea temperatures of the Great Barrier Reef were the highest on record since 1990 (Great Barrier Reef Marine Park Authority, 2016). Primary reports have shown that only 7% of reefs have been left untouched by bleaching (Figure 2). Scientists have noted that “bleaching coincides with where the hottest water sits for the longest period” (James Cook University 2016). Rising sea temperatures continue to have significant impacts on the GBR, with further severe bleaching events in 2017 and in March 2020 (Great Barrier Reef Marine Park Authority 2020).

Coal mining is a strong industry in the southern part of the GBR catchment area with 22 approved or operating coal mines, and another 4 proposed coal mines (Figure 3). Mining is an important consideration for the management of the GBR for two reasons. One, coal from mine requires export and therefore is a driving force for the demand for new ports (Grech, Pressey & Day 2015). Two, as mentioned earlier, climate change is a major factor in the decline of health in the GBR and the mining of coal has indirect impacts through the future carbon emissions released when that coal is burned. Climate change and coal mining are inextricably linked, and the impacts to the GBR from these pressures are becoming more and more apparent.

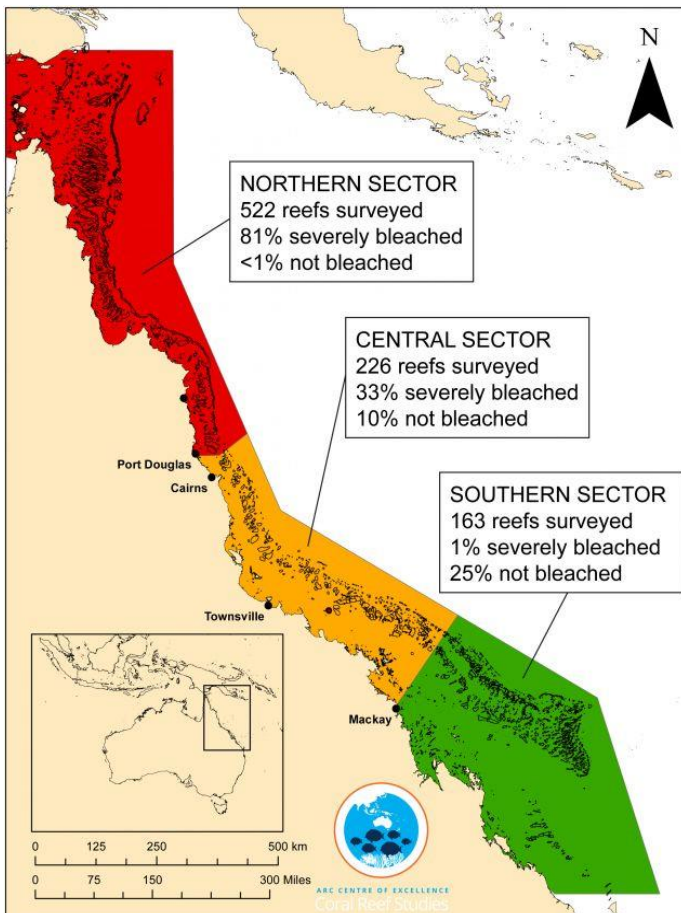
## CUMULATIVE IMPACTS AND NATURAL RESOURCE MANAGEMENT

Impacts of port developments are supposedly mitigated through environmental conditions imposed on development approvals. However with the decreasing health of the GBR, the effectiveness of these conditions are called into question. The combined impact of the 12 ports are enough to warrant cumulative impact considerations alone. However port developments are only one of many pressures on the GBR, and each of the others have potentially damaging impacts that should not be considered in isolation of each other.

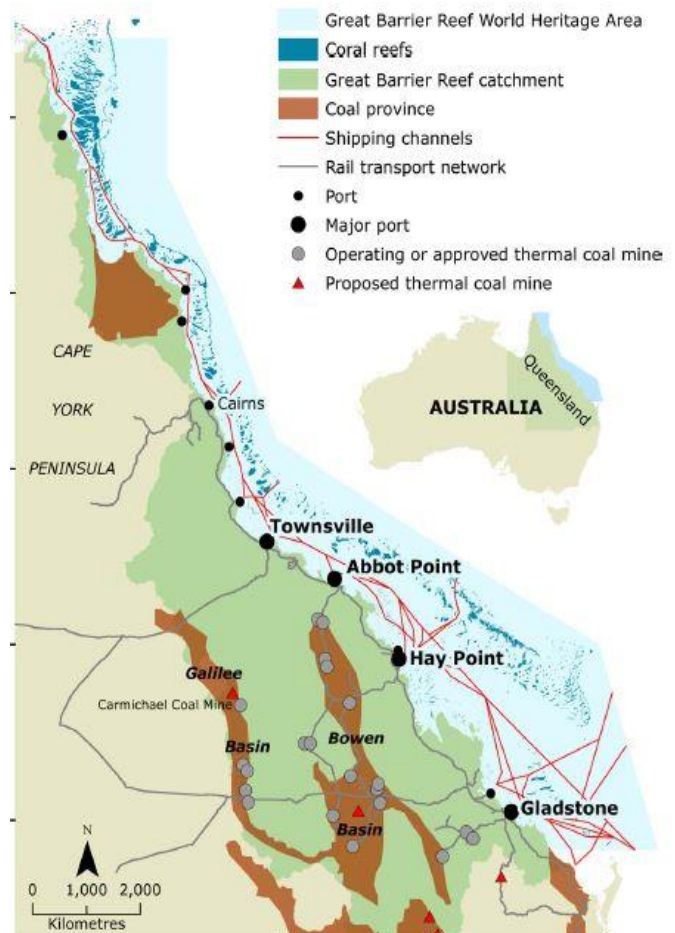
Any developments that interact with the GBR must be assessed under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC), due to its status as a World Heritage Area. However the EPBC Act does not consider the cumulative nature of pressures on the reef (Dales 2011). GBRMPA has recognised the need for greater consideration of cumulative impacts, with the *Reef 2050 Long-Term Sustainability Plan* identifying the need to develop guidelines that assess for cumulative impacts. NRM problems arise because GBRMPA does not have the legislative power to ensure port development impacts are measured using a cumulative impact assessment. Dales (2011) highlights the tension between land use and biodiversity conservation in the NRM of the GBR, but goes on to argue that resource use in the GBR has more multifaceted, widespread and persistent effects than originally

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thought. Dales (2011) concludes that, legislation needs to catch up with science and reflect what is now known about the cumulative impacts of pressures on the reef.



**Figure 2** Map of the Great Barrier Reef showing results of aerial surveys of 911 reefs. Map: ARC Centre of Excellence for Coral Reef Studies / Tom Bridge and James Kerry (James Cook University)



**Figure 3** Operating, approved and proposed mines and associated shipping channels in

## CONCLUSION

Port development has been shown to have a wide range of negative implications for the GBR environment. With 12 ports currently in operation and another 4 proposed, the cumulative nature of ports alone can have a serious impact on the health of the GBR. The picture becomes more serious when the scope is broadened to consider the wide variety of other pressures on the GBR. An examination of shipping; water quality; fisheries; mining and climate change, has highlighted the myriad of other serious environmental concerns that the GBR is facing. The impacts of port developments are currently assessed independently of each other and the other pressures. Scientists and management authorities alike have highlighted that to preserve the ecosystem function of the GBR, cumulative impact assessments must be used. Without assessment of the cumulative nature of the pressures on the GBR, effective management of this natural resources is unlikely to occur.

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## THE CASE FOR NEW LAWS

It has been demonstrated time and time again that the EPBC Act is failing in its purpose. Ward et al.<sup>1</sup> examined the effectiveness of the EPBC Act and concluded that:

*“Our research highlights that Australia's flagship environmental legislation is ineffective at halting habitat loss for terrestrial threatened species, terrestrial migratory species, and threatened ecological communities”*

Without major reform we will see our species extinction continue, we will lose our critical habitat, and incredible places like the Great Barrier Reef and the Wet Tropics Rainforest will not continue to function. We have responsibility to nature, our communities, our nation and the international community to ensure that this does not occur. CAFNEC supports the following key priorities in ensuring we have robust new laws:

- A new generation of federal environment laws
- A requirement to assess and account for cumulative impacts
- Bioregional planning is required in assessments and can identify priorities for protection in the landscape
- The inclusion of vulnerable species
- The inclusion of climate change in threatening processes
- Monitoring and compliance are well funded, and compliance and monitoring requirements are clear and concise

As a member of the Places You Love Alliance, we support the need for a new generation of environment laws that further our current legislation by ensuring it includes the following elements.

<sup>1</sup> Ward, MS, Simmonds, JS, Reside, AE, et al. *Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia*. *Conservation Science and Practice*. 2019; 1:e117. <https://doi.org/10.1111/csp2.117>

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## ROLE OF THE COMMONWEALTH

(QUESTIONS 1 AND 9)

The EPBC Act 1999 is Federal legislation that must have a nationwide standard and enforcement. The current system is not nationally consistent and is therefore confusing for decision makers, hard to enforce and constantly changing. The Commonwealth must take accountability for our national environmental laws under a new framework that will deliver

- Accountability for the improvement of environmental indicators
- Development of national goals, standards and reporting
- Protection for specific National Environmental Matters
- Coordination of multiple jurisdictions and regulatory regimes.

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### PRINCIPLES AND OBJECTS OF THE ACT

(QUESTIONS 2 AND 3)

#### Objects of the Act

The current objects of the Act are fairly strong, but they could be stronger. The Act should also include a limited number of secondary objects including:

1. To recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; **to ensure the involvement of these First Australians in land and sea management**; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes;
2. To **recover, prevent the extinction or further endangerment of Australian plants, animals and their habitats**, and to increase the resilience of native species and ecosystems to key threatening processes;
3. To ensure **fair and transparent decision-making; government accountability; early and ongoing community participation in decisions**.
4. **To fulfil Australia's international environmental obligations and responsibilities**, in particular to take all steps necessary and appropriate to achieve the purposes of the following treaties, conventions and their subsidiary instruments:
  - a. the World Heritage Convention;
  - b. the Convention on Biological Diversity;
  - c. the Ramsar Convention on Wetlands of International Importance;
  - d. the Bonn Convention on the Conservation of Migratory Species of Wild Animals;
  - e. the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
  - f. the United Nations Declaration on the Rights of Indigenous Peoples; (vii) the United Nations Framework Convention on Climate Change (as applicable to emissions reduction and carbon management under the Act);
  - g. United Nations Convention to Combat Desertification;



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- h. special bilateral or multilateral conservation agreements (including agreements with Japan, China and the Republic of Korea to protect migratory birds in danger of extinction) and
- i. any other international agreement relevant to the objects of this Act
- j. To recognise and promote the intrinsic importance of the environment and the value of ecosystem services to human society, individual health and wellbeing.
- k. Ensure the Minister and all agencies and persons involved in the administration of the Act must act consistent with, and seek to further, the primary object of the Act.

### Principles of the Act

The Act should contain a number of principles that decision-makers must act in accordance with when making decisions under the Act. Key updated ecologically sustainable development principles include:

1. Taking preventative actions against likely harm to the environment and human health (**prevention of harm**).
2. Taking precautionary actions against harm that would be serious or irreversible, but where scientific uncertainty remains about that harm; and engaging transparently with the risks of potential alternatives (**precautionary principle**).
3. The present generation have an obligation to ensure:
4. that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (**intergenerational equity**), and
5. that environmental costs, benefits and outcomes are borne equitably across society (**intra-generational equity**).
6. Ensuring that biodiversity and ecological integrity are a fundamental consideration in decision-making, including by preventing, avoiding and minimising actions that contribute to the risk of extinction (**biodiversity principle**).
7. Ensuring that the true value of environmental assets is accounted for in decision-making – including intrinsic values, cultural values and the value of present and future ecosystem services provided to humans by nature (**environmental values principle**); and
8. That those responsible for generating waste or causing environmental degradation bear the costs of safely removing or disposing of that waste, or repairing that degradation (**polluter pays principle**).
9. the principle of **non-regression** to environmental goals and protections, and continuous improvement in environmental standards and management over time.
10. The principle of free, prior and informed consent of Indigenous groups for relevant actions (**principle of free, prior and informed consent**).

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### ROLE OF THE EPBC ACT

(QUESTIONS 8, 13, 14)

A new federal environment Act, should provide the Commonwealth with all the powers it needs to fulfill a greater leadership role in the protection of Australia's environment;

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1. The Act should give the Commonwealth power to set binding national standards and objectives that all states must adhere to.
2. The Act should ensure the Commonwealth retains primary regulatory responsibility for an expanded list of matters of national environmental significance (see part 7 below).
3. In order to avoid duplication of processes, the Act should allow the Commonwealth to delegate environmental impact assessment functions under the Act to the states only in certain circumstances namely:
  - a. For assessment of environmental impacts of a project only (ie assessment bilateral agreements), **not a delegation of its approval powers** (approval bilateral agreements). **All approval powers for nationally significant matters should be retained by the Commonwealth.**
  - b. Any accreditation and delegation of assessment powers to the states must be done using independent auditors to ensure state laws meet Commonwealth standards.

**CAFNEC does not support Commonwealth powers being handed over to the States in circumstances other than assessment bilateral agreements.**

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### OUTCOMES TO BE ACHIEVED BY FEDERAL ENVIRONMENTAL LAW

Effective federal environmental laws should achieve the following 11 outcomes:

1. Ensure the Federal Government assumes responsibility and leadership for reversing the decline in Australia's environment;
2. End destruction of primary, remnant, old-growth or high-conservation value forests and bushland;
3. Prevent the extinction of native fauna and flora;
4. Protect and recover key biodiversity areas, threatened ecological communities and threatened species including strict protection for their critical habitats;
5. Substantially reduce Australia's greenhouse gas pollution and increase carbon sequestration in biodiverse landscapes;
6. Safeguard freshwater ecosystems, including from extractive and industrial processes;
7. Reduce, to as close to zero as possible, air pollution, plastic pollution and chemical pollution across Australia;
8. Maintain and strengthen the prohibition on domestic nuclear power, enrichment and reprocessing whilst advancing responsible domestic radioactive waste management.
9. Safeguard the natural and Indigenous cultural values of Australia's protected areas, heritage places, and other conservation tenures;
10. Prevent the introduction of, and reduce the current extent, spread and population size of invasive species that are threatening biodiversity;
11. Effectively protect Australia's wildlife from commercial exploitation including illegal wildlife trade and unsustainable fishing.

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### MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

(QUESTION 4)



The Australian Government should retain existing Matters of National Environmental Significance (MNES) in an expanded list of National Environmental Matters that provides for national protection of critical environmental values. An expanded list of National Environmental Matters should include:

1. Australia's parks and reserves
2. Critical habitats and climate refugia
3. Impacts from land clearing
4. Greenhouse gas emissions and air pollution
5. Water resources
6. Ecosystems of National Importance
7. Protecting against invasive species
8. Vulnerable ecological communities.
9. Climate change impacts

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### RECOVERY PLANNING

(QUESTION 11)

#### **Recovery Plans**

**Recovery Plans** for threatened species and ecological communities provide the Commonwealth, State and Territory Governments the legislative instrument to establish the processes and mechanisms for ecological restoration and species recovery. The EPBC Act details the development of Recovery Plans but lacks clear frameworks to enforce, implement, fund and review them.

To be effective the following must be implemented:

1. the mandatory development of Recovery Plans for threatened species or ecological communities consistent with the best available science;
2. the identification of critical habitat; including better guidance to decision makers for impacts on threatened species;
3. establishing a national recovery fund that invests directly in recovery plan implementation and strategic priority actions;
4. A framework to assess and monitor the effectiveness of Recovery Plans that should include mandated annual reporting and auditing of plan implementation and performance.
5. It is also proposed that there would be obligations for state and territory jurisdictions to actively assist and/or lead on recovery plan implementation.

#### **Threat abatement planning**

Greater focus should be made on mandatory threat abatement planning. Public nomination for key threatening processes to be continued with assessment by the TSSC.

Threat abatement plans are the primary threat response instrument and need to be clear and concise. They must be more tightly focused on threat abatement actions and include mandatory

implementation obligations and commitments of all parties, a monitoring and reporting regime to track threat status and outcomes for threatened biota and explicit targets for abatement and triggers for review/revision of the TAP and how the TAP will be integrated with relevant recovery plans and other plans.

Similar to recovery plans there would need to be a mandatory annual monitoring system and an obligation for state and territory governments to implement plans.

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### Regional planning

(QUESTION 16)

**Bioregional plans** give Commonwealth, State and Local Governments the opportunity to map areas of environmental significance within bioregions and make decisions that account for bioregional impacts and fully understand the interconnectedness of the landscape. The Commonwealth has the power to make bioregional plans under the EPBC Act, but it has never been used for land assessments.

The Commonwealth needs to strengthen bioregional planning to allow the Commonwealth to identify ‘no go zones’ where development cannot occur, such as critical habitat, and a requirement that decision-makers make decisions that account for bioregional plans.

**Strategic impact assessments** allow the Commonwealth and State Governments to conduct environmental impact assessments at a larger scale than individual project assessments, and assess cumulative impacts. However a big risk to the environment from strategic assessments is that individual projects that meet the conditions of the strategic assessment do not have to be individually assessed and approved, even if they occur many years later and environmental conditions have changed significantly.

The use of strategic assessment should only be permitted in combination with strict rules, most importantly:

- strong legislated standards, decision-making criteria and science-based methods, including a ‘maintain or improve’ environmental outcomes test (such as for biodiversity, water quality, vegetation, carbon storage) and requirements to be consistent with recovery plans and threat abatement plans;
- cumulative impact assessment requirements, taking account of past, present and likely (approved) future activities at the relevant scale;
- comprehensive and accurate mapping and baseline environmental data;
- mandating transparency and public participation at all phases of the process, including to verify post-approval compliance, to ensure community confidence and acceptable outcomes;
- requiring alternative scenarios to be considered, including for climate change adaptation, to enable long-term planning for realistic worst-case scenarios (i.e. plan against failure);
- adaptive management and review once a program is accredited, to respond to new discoveries, correct unsuccessful trajectories or implement best available technology;

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- as complement to individual project assessment where appropriate, not necessarily to replace it; and
- robust oversight, including via legislated, independent performance audit requirements, transparent verification of compliance, and ‘call-in’ powers for higher-risk actions and clear penalty provisions for non-compliance.

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### REGULATORY APPROACHES

(QUESTIONS 5, 10, 17, 18 AND 22)

The Commonwealth should have a suite of tools that enable it to drive conservation and sustainable development in Australia. Below is a summary of the key features and tools that would allow a new federal environmental law to more effectively and efficiently protect the environment.

#### **National Environment Plan**

The Commonwealth would be required to develop an overarching plan for Australia’s environment. It would include national priorities, goals and metrics to protect and restore the environment in key areas regulated under the Act such as climate, native species and ecosystems, pollution, heritage, protected areas, land clearing etc.

#### **National Environment Impact Assessment of National Environment Matters**

As mentioned above, a new federal environment Act should contain an expanded list of matters of National Environment Matters, for which the Commonwealth has regulatory responsibility. Any person taking an action which is likely to trigger a specific impact threshold for a National Environment Matter must refer to the action for environmental impact assessment (EIA) and a decision as to whether the action can go ahead or not. Decisions must give effect to the objects and purposes of the Act, must comply with decision-making criteria in the Act, and be consistent with all relevant national plans and standards made under the Act, including recovery and bioregional plans.

#### **Environment Plans**

The Act should require or allow a number of environment plans to be made for specific areas that are the subject of the Act. There should be different types of plans, depending on the purpose of the plan and the Constitutional head of power that it's made under. All plans must be consistent with the National Environment Plan, give effect to the objects and purpose of the Act, and comply with decision-making criteria under the Act. The plans would include:

- Bioregional plans
- Threat abatement plan
- Recovery plans
- Pollution abatement plans

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- Management Plans for Ecosystems of National Importance, World Heritage Areas and Ramsar Wetlands

### National standards and targets

The Act would contain power for the Minister or the National Environment Commission to make standards in regulations (in a situation where a national plan is not required/provided for). The non-regression principle would assist in preventing standards from being weakened by successive governments and State laws must not override or undermine national standards e.g. target to phase out single use plastic, conserve high conservation value vegetation or rehabilitation requirements for mining operations.

### Conservation agreements/conservation covenant mechanisms

The Commonwealth should have the power to make in perpetuity conservation agreements/conservation covenants with any entity, including private landowners. Agreements and covenants must comply with all relevant plans under the Act and have a binding effect on the title of any property on which they apply.

### Data gathering and reporting

To support planning and decision-making under the Act, a system of National Environment Accounts should be developed, administered by the National Environment Commission, which would track key environmental indicators and their extent, condition and threat status over time. The Commission should report to parliament against the goals and metrics identified in the National Environment Plan annually.

**We do not support self-regulation of any kind. There are very few examples of effective industry self-regulation, and numerous examples of the failures of self-regulation schemes.**

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## REGULATING POLLUTION

### (QUESTION 10)

At present, the EPBC Act does not regulate pollution, the Commonwealth Government should provide a standard setting role to limit and control harmful pollution that pose risks to environmental and human health. The Commonwealth would set national standards via pollution abatement plans that the states would meet via their own regulation and policies. It would also expand out to pollution sources where it is clear that a national approach is needed, such as for plastic pollution.

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## INCREASING INDIGENOUS INVOLVEMENT, KNOWLEDGE AND RIGHTS

At present the EPBC Act does not adequately safeguard the natural and Indigenous cultural values of Australia's protected areas, heritage places, and other conservation tenures; and does

not specifically recognise Indigenous knowledge or enshrine the principle of free, prior and informed consent of First Nations people.

Indigenous groups and communities should be specifically consulted on what reforms they would like for the EPBC Act, and new federal environmental laws.

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## GOVERNANCE AND ACCOUNTABILITY

(QUESTION 21)

### **New Commonwealth institutions**

We recommend two new institutions to ensure accountability, independent decision-making and regulation.

**A National Environment Commission** should be established which would be a body independent of departmental or ministerial direction reporting annually to parliament on the state of the environment. It would:

1. Develop and oversee national environmental goals, strategies, plans and standards;
2. Require at least one full time Commissioner and independent public sector staff appointed from commencement of the Act;
3. Have the mandate to negotiate with all levels of government regarding Plans etc;
4. Progress development of National Environmental Accounts that includes, but not limited to, National Environmental Matters;
5. Gather and publicly disseminate evidence on environmental conditions and trends to inform decisions and improve outcomes over time;
6. Ensure recovery plans, threat abatement plans, conservation advice and threat mitigation directives are up to date and integrated into bioregional plans.

**A National Environment Protection Authority** should be established which would be the new Commonwealth assessment, approval and enforcement body for environment issues that are nationally important. The establishment and adequate resourcing of an independent national environment protection authority that operates at arm's-length from government is key. It would:

1. Be governed by an independent board and headed by a separate chief regulator;
2. Have statutory duties to use powers and functions to achieve the Act's aims;
3. Undertake assessments, approvals, refusals and enforcement of activities that affect environmental issues of national importance;
4. Undertake impact assessment and approval of actions on land and waters including strategic assessments and accreditations;
5. Undertake independent compliance, audit and enforcement roles;
6. Include a separate unit responsible for post-approval project and plan compliance, audits, monitoring and reporting;
7. Ensure approvals comply with statutory plans under the Act (e.g. recovery plans, threat abatement plans, bioregional plans);

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8. Review, advise and report openly to the Minister on specific development projects; and
9. Be adequately resourced.

Community rights to review decisions and enforce the Act

Access to justice is a crucial component of public confidence in environmental decision making. It is also one of the best ways to ensure accountability, transparency, and guard against corruption in decision-making. Reforms must include:

1. Open standing for any person to seek review of government decisions or to enforce a breach or anticipated breach through third party enforcement.
2. Extending legal standing to merits review of approval and permitting decisions. This has been shown to improve the rigour of decision making.
3. A statutory right for citizens to ask the court to require performance of mandatory duties by the Minister or other decision-makers under the Act.
4. Protection for costs for public interest legal proceedings, for example limiting upfront cost orders that deter the community from exercising legal rights.

Industry groups at times make false claims that giving the community a right to appeal decisions and enforce the law will “open the floodgates” and allow a rash of vexatious litigation. In fact there is no evidence, from any jurisdiction in Australia, that this occurs when community appeal and enforcement rights are provided. Indeed the opposite is true, that proponents use appeal rights far more frequently than the community, and more community appeals and enforcement actions are needed to ensure transparency and good decision-making. See for example [MacIntosh et al 2017](#) and [Pepper 2018](#).

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## OFFSETTING

(QUESTIONS 22 AND 23)

Biodiversity offsets can be hugely problematic, as it is not possible to truly offset the destruction of important vegetation or the removal of threatened species. There are a diversity of views on the appropriateness of offsets. Groups are well within their rights to oppose any sort of offsetting. Where offsetting is allowed strict rules should apply, for example:

- Biodiversity offsetting of impacts on critical habitat, endangered or critically endangered species and ecological communities is not allowed. This recognises that some assets are too significant (or outcomes too uncertain) to ‘offset’. This approach also reinforces incentives to conserve species at a landscape scale to avoid extinction risk in the first place.
- Use of biodiversity offsets should be minimised and require a precautionary approach given the long timeframes and current uncertainty of offsetting being capable of delivering successful outcomes.
- Any offsetting (such as for vulnerable, near-threatened or non-threatened biodiversity and ecological communities) should require a scientifically robust National Offsets Policy and consistent standards.
- Policy and standards must require that offsets are a last resort, after all efforts are made to avoid and minimise impacts; meet strict scientific like-for-like biodiversity principles; adopt a ‘maintain

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or improve' standard to measure outcomes (or 'no net loss and preferably net gain'); and ensure offsets are protected in perpetuity (offsets cannot be offset).

- Offset calculations must be consistent with a precautionary approach, and no offsets would be available for future mine remediation due to lack of evidence of success. Furthermore, any offsetting must be consistent with recovery goals in recovery plans.