

22 July 2022

Independent EPA consultation
Department of Environment and Science
Email only: EPAProgram@des.qld.gov.au

Dear Department of Environment and Science,

Thank you for the opportunity to provide submissions on the Independent Environmental Protection Agency (**EPA**) consultation Discussion Paper, May 2022 (**Discussion Paper**).

We provide these submissions jointly, given the common concerns held by the groups united in this submission, being made up of the groups advised here:

- Environmental Defenders Office Ltd
- Wide Bay Burnett Environment Council Inc
- Darling Downs Environment Council
- Gympie and District Sustainability Alliance
- Karawatha Forest Protection Society Inc
- Gecko Environment Council Association Inc
- Western Downs Alliance
- North Queensland Conservation Council Inc.
- Oakey Coal Action Alliance
- Australian Rainforest Conservation Society Inc
- Birds Queensland
- Environment Council of Central Queensland
- Cairns and Far North Environment Centre
- Birdlife Southern Queensland
- Protect the Bush Alliance
- Lockyer Community Action Inc
- Wildlife Queensland
- Logan and Albert Conservation Society
- Koala Action Gympie Region Inc
- Centenary and District Environment Action Inc
- WWF Australia
- Boomerang Alliance
- Wildlife Queensland, Townsville Branch Inc
- Gladstone Conservation Council Inc
- Sunshine Coast Environment Council
- Mackay Conservation Group
- Australian Marine Conservation Society
- Lock the Gate Alliance Limited
- Brisbane Catchments Network Inc
- Australian Conservation Foundation
- Queensland Water and Land Carers
- Cooloolo Coastcare
- National Parks Association of Queensland Inc
- Queensland Conservation Council
- Sustainable Population Australia, Queensland Branch

We are glad to see that the Queensland Government is committed to investigating the establishment of an independent EPA in Queensland. Queensland is sorely in need of the greater integrity in environmental regulation and environmental justice that an effective and well-resourced independent EPA could provide. Given the decline in Queensland's environmental values, this is an imperative for future generations.

We raise our concern with the high-level consultation offered by the Department of Environment and Science to date, through survey questions which provide little insight into the concerns of Queenslanders regarding environmental governance today, and how these concerns can best be addressed through an EPA. For this reason, we provide this joint submission explaining the position held by those signed on as to what the real issues are that are holding back integrity and effectiveness in environmental regulation in Queensland today, and how these can be best addressed.

Real change is needed to address issues with environmental regulation in Queensland

We are concerned that the Discussion Paper does not address many of the serious and real issues that exist in environmental regulation and governance in Queensland. Significant resources are being invested into the investigation of an EPA for Queensland, and even more will still be required to implement an EPA if the government chooses to do so.

We strongly recommend the Queensland Government uses this opportunity to make changes which address the real issues that are currently reducing integrity, efficiency and outcomes in environmental governance in Queensland, rather than wasting resources on implementing an EPA with no genuine outcomes improving the issues needing to be addressed.

The Discussion Paper does not address the present key issues with environmental regulation in Queensland

There are a range of issues which are currently reducing integrity in environmental governance in Queensland which are not addressed in the Discussion Paper, particularly these five issues:

1. inadequate representation and protection of First Nations interests;
2. the weak role DES plays in environmental decision-making;
3. regulatory capture impacting decisions being made in the public and environment's interest;
4. inadequate resourcing for compliance with and enforcement of environmental regulation; and
5. a lack of clear long term environmental goals for the state, including around climate change and biodiversity, implemented through decision-making criteria.

Meaningful First Nations representation in decision-making

Currently under Queensland's environmental laws, First Nations are frequently not consulted with respect to development on their Countries, particularly at the time of decision on the major approvals needed for a project. This lack of meaningful consultation, along with the inability to say no to development on their Lands, is inconsistent with the *United Nations Declaration on the*

Rights of Indigenous Peoples, particularly the rights to free, prior and informed consent and self-determination.

Given the interrelation of environmental regulation of developments and First Nations interests and relationships with their Countries, any reforms seeking to establish an independent EPA must engage in meaningful consultation with First Nations. In addition, key decision-making and governance roles must include First Nations, including any board or committee established.

The Discussion Paper states that consultation about specific First Nations elements of the proposal to implement an independent EPA is ‘most appropriately held directly with our First Nations partners’. However, it is unclear from the Discussion Paper who DES’s First Nations partners are, and how DES is ensuring that there is sufficient consultation with all First Nations in Queensland who may have an interest in an independent EPA.

DES is being overridden by other agencies in environmental decision-making

Currently DES regularly has its decision-making and advice overruled or amended by other agencies which are usually focused on development, and which do not have expertise or focus on environmental protection. Of most concern is the influence the Coordinator-General has in respect of coordinated projects, and the influence the State Assessment and Referral Agency (**SARA**) has in respect of development applications.

DES previously held concurrence agency power for planning decisions which posed significant environmental impacts, allowing DES to require certain conditions to avoid or mitigate impacts, or require refusal where the predicted impacts posed to matters of state significance were considered too great. This power has since been removed with the introduction of SARA. Instead, DES now provides only a technical advice agency role in which its scientific and environmental policy expertise can be ignored and which is not required to be revealed to the public.

DES’s expertise can also be overridden by the Coordinator-General, who can disregard its expert advice in the assessment of EIS’s for coordinated projects, which are typically the projects that pose the greatest environmental impacts, such as large mines. Through the evaluation report for the EIS, the Coordinator-General may prescribe environmental conditions for the project, for which DES is unable to provide inconsistent conditions. Even if the EIS is subject to a Land Court decision finding that the EIS and subsequent conditions are based on incorrect information, the Land Court also cannot recommend conditions which are inconsistent with the Coordinator-General’s prescribed conditions. This creates inefficiencies in environmental assessment and significantly hampers the ability of DES to assess and decide project proposals in the best interests of the public and environment, as required under the *Environmental Protection Act 1994* (Qld).

Regulatory capture is impacting decisions made in the public and environmental interest

‘Regulatory capture’ occurs where an authority set up to perform a public service, such as an environmental regulator, is encultured to reflect the commercial aims of an industry it is set up to regulate. We hold strong concerns that there is development industry capture of environmental governance in Queensland, where the arm of environmental governance responsible for

assessment and enforcement is too close to the industries it must regulate.¹ There has been a change in framing in the past 10 years, such that DES is currently operating as a business, with a focus primarily on supporting industry and considering industry its ‘customers’, rather than considering itself a regulator of industry in the public interest. This proximity to industry and the resulting risks are also increased where the government must work with industry to discuss policy proposals, to ensure they are understood and developed in a way that is logical for the industries they are seeking to regulate.

As found in the recent ‘Coaldrake Review’ on accountability in the Queensland Government, many departmental officials have also indicated that there are cultural issues within the Queensland public service. Officials reported they have felt undue political influence and were unable to provide independent advice or make decisions that may prove unpopular with ministers or other elected members of parliament.²

Regulatory capture is evident in decision-making around enforcement, where enforcement is frequently inadequate in meaningfully deterring proponents from breaching conditions. An example is the scenario which occurred recently with respect to the New Acland Coal Mine, in which the proponent was found to have illegally mined part of an area not specified in its authority, and yet was only subject to an enforceable undertaking which requires them to do slightly more rehabilitation, and was then granted a further extension to their project.

Inadequate resourcing is available for compliance and enforcement activities

A lack of adequate funding can significantly hamper the ability of an environmental regulator to fulfil its functions, and thus impact on the quality of the environment. Queensland environment departments have consistently been chronically understaffed and underfunded, which has resulted in failures to undertake compliance and enforcement activities.

DES has been widely criticised for their failure to enforce environmental laws, including failing to properly enforce laws designed to protect our Great Barrier Reef,³ and failing to respond to the complaints of communities,⁴ relying on communities⁵ to complain in order to find that an authority had been breached, and providing ineffective fines⁶ when enforcement actions are taken that are so small they are unlikely to deter further breaches.

¹ Briody, M and Prenzler, T, *The enforcement of environmental protection laws in Queensland: A case of regulatory capture?*, Environmental and Planning Law Journal, Vol.15(1), pp.54-71.

² Peter Coaldrake, Review of culture and accountability in the Queensland public sector (Final Report, 28 June 2022) 74-75.

³ Uibo, K and McKinnon, M, *Queensland Government isn't enforcing law aimed at protecting Great Barrier Reef from fertiliser run-off, documents show*, ABC News, 11 October 2018.
<https://www.abc.net.au/news/2018-10-11/laws-not-stopping-fertiliser-runoff-to-reef/10348718>.

⁴ *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection* (No. 4) [2017] QLC 24 at [580].

⁵ *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection* (No. 4) [2017] QLC 24 at [571].

⁶ Smee, B, *New Acland coalmine fined just \$9,461 for 34 separate noise violations*, The Guardian, 24 June 2022.
<https://www.theguardian.com/environment/2020/jun/24/queensland-new-acland-coalmine-fined-just-9461-for-34-separate-noise-violations>.

Need for long term environment goals as objectives required to be achieved by the EPA

The Queensland Government currently has emissions reductions targets and renewable energy targets to mitigate the damaging impacts of climate change. However, there has been no implementation of these targets into the decision-making criteria of the environmental regulator to ensure the targets are achieved. Further, the slow pace at which a proposed Biodiversity Strategy for the state is being prepared and released points to a reluctance to formalise long term environmental goals. Providing tangible goals for desired environmental outcomes would provide the EPA with a clear purpose and ensure coherent implementation and achievement of government policies. To ensure the goals are enforced the EPA should have the right to intervene in state decisions that affect achieving these goals.

Key asks for an independent EPA

Overall, the focus of Queensland's work in creating a new independent EPA must be to make improvements in how decisions are made that impact the environment and the interests of First Nations.

We need to ensure resources are not wasted on just rebranding DES, or introducing unnecessary governance – changes must be made that lead to greater protection of the environment and First Nations justice through environmental governance and decision-making.

In order to address the issues with environmental regulation discussed above, we are asking that the following three changes be implemented in the design of an independent EPA for Queensland:

1. First Nations justice must be a central focus of environmental governance within the EPA, with First Nations and their interests meaningfully represented in decision-making, given the role of environmental decisions in destructive colonisation.
2. The EPA must be an empowered, sufficiently resourced science-led environmental regulator, independent of ministerial and industry influence, and not overridden by other agencies.
3. There must be consistent decision-making across all government agencies to meet key environmental targets, such as climate and biodiversity targets, with the EPA empowered and obliged to enforce the achievement of these targets.

First Nations justice must be a central focus

First Nations must have a central role in environmental governance and decision-making by an EPA, as environmental governance and decision-making have been and continue to be destructive tools of colonisation, with First Nations being excluded from and often severely impacted by decisions around land management, ownership and environmental impacts. Such decisions have often been detrimental to First Nations and their cultures, livelihoods and connection to their Countries and communities.

We understand that DES is progressing initiatives under its Gurra Gurra Framework 2020–2026 to reframe relationships with First Nations. This commitment to working with First Nations Peoples to incorporate their priorities and perspectives in decision-making and operations is to be commended, as a failure to properly involve First Nations in decision-making that may impact

Country can have devastating outcomes, seen in the destruction of 46,000+ year-old rock shelters in Juukan Gorge, Western Australia.

In order to centre First Nations justice, the Queensland Government must ensure it is engaging in extensive consultation with First Nations across Queensland regarding the establishment, design and operation of an independent EPA. It must also ensure that First Nations are in key decision-making roles in the EPA. Cultural Protocols which set out accepted standards and procedures for all dealings between the EPA and First Nations must also be developed through extensive consultation and co-design with First Nations in accordance with the principles of free, prior and informed consent and self-determination.

For more information on why First Nations justice is central to environmental governance and regulation, refer to EDO's report, [*Implementing effective independent Environmental Protection Agencies in Australia*](#).

EPA must be sufficiently empowered and resourced, and free from external influence

An independent EPA must be empowered as the leading science-led environmental regulator in Queensland, which primarily requires that its expertise has equal authority with, and is not overridden by other agencies, particularly SARA and the Coordinator-General.

In relation to the excessive authority of SARA, this can be most easily improved by ensuring that the EPA, in whatever form, is given concurrence agency power for planning decisions, which often involve significant environmental impacts. In addition, any advice provided by DES should be published on provision.

In relation to the influence of the Coordinator-General, this can be most easily improved by requiring that the advice and requests of DES to the Coordinator-General during the preparation and assessment of any EIS are required to be followed and published, including requests for more information from the proponent to assist in assessment and decision-making.

The ability for the Coordinator-General to prescribe environmental conditions for a project, with which conditions imposed by DES or recommended by the Land Court must be consistent, should also be removed to ensure efficient decision-making on the best information available.

Consistent decision-making with clear objectives and enforcement powers to achieve targets for environmental protection

If the Queensland Government is to achieve the goals of its Climate Action Plan, namely 50% renewables, 30% emissions reduction below 2005 levels by 2030, and zero net emissions by 2050,⁷ then decision-makers across all government agencies must have clearly defined and enforceable objectives and decision-making criteria which align with these goals. The EPA must also be sufficiently empowered and obliged to enforce the achievement of these targets. Similar goals and targets are also required for improvements in protection of threatened species, biodiversity, air and water quality and pollution reduction.

Given environmental decision-making currently occurs across multiple departments, improvements in efficiencies in assessment processes could be made if an independent EPA was established to monitor and enforce the government's emissions reductions and renewable energy

⁷ <https://www.des.qld.gov.au/climateaction>.

targets. This could be achieved through defining the objectives of an independent EPA by reference to the Climate Action Plan goals, and by providing the EPA with powers to publicly audit the achievement of these goals and all environmental goals across government. Ideally the emissions reductions and renewable energy targets would be legislated, to affirm the targets, require that all decision-makers must act in accordance with them and to provide a process for interim targets, as well as public reporting and monitoring.

Lack of meaningful consultation is a cause for concern

As discussed above, we are concerned about the limited consultation undertaken so far with respect to the investigation into an EPA for Queensland, consisting only of narrowly scoped survey questions.

The questions contained in the survey are too general to obtain meaningful feedback from the community and stakeholders. The questions are often phrased in a leading manner, and do not allow for any elaboration or nuance about why a particular answer was provided. The ranking system in question 1 is also illogical, as the different elements of governance being ranked are not mutually exclusive – all can be prioritised in the implementation of an independent EPA.

In addition, having DES undertake an assessment of the adequacy of its own functions against the tests of good environmental governance is not an opportune way of obtaining an objective understanding of DES's current flaws and how these flaws may be best addressed.

We would gladly provide more information or discuss these submissions if clarification is required.

Yours faithfully



Revel Pointon, Managing Lawyer,
Environmental Defenders Office Ltd



Environmental
Defenders Office

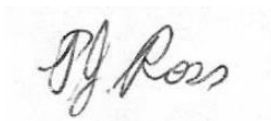


Lucy Graham, Director
Cairns and Far North Environment
Centre

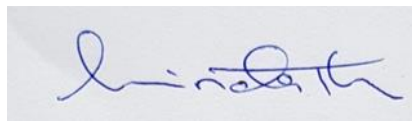
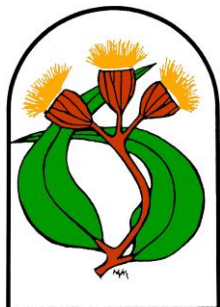


Rose Adams, Secretary
Gecko Environment Council Assoc Inc





Paula Ross, Secretary
Karawatha Forest Protection Society
Inc.



Linda Tabe, President
Cooloola Coastcare



Paul King, Secretary
Western Downs Alliance



Dr Aila Keto AO, President
Australian Rainforest Conservation
Society Inc



Paul King, Secretary
Oakey Coal Action Alliance



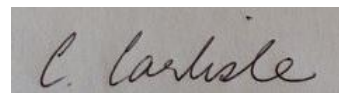
Andrew Thelander, President
Birds Queensland



Lee Mason, Secretary
Darling Downs Environment Council

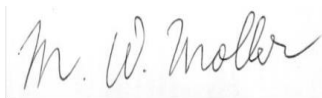


Susanne Cooper, President
National Parks Association of
Queensland Inc



Christine Carlisle, President
Environment Council of Central Queensland





Mike Moller, Regional Engagement
Coordinator
Wide Bay Burnett Environment
Council Inc



Jason Lyddieth, Senior Climate and
Energy Campaigner
Australian Conservation Foundation



Murray Keys, President
Gympie and District Sustainability Alliance



Sheena Gillman, Secretary
Protect the Bush Alliance



Darryl Ebenezer, CEO
Queensland Water and Land Carers



Dr Gary Fitt, Convenor
Birdlife Southern Queensland



Hanneke Nooren, President
Lockyer Community Action Inc



Ellie Smith, Queensland Coordinator
Lock the Gate Alliance Limited



Des Boyland, Policies and Campaigns Manager
Wildlife Queensland





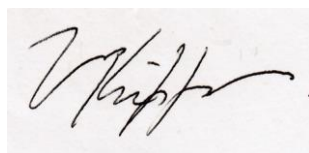
Anne Page, President
Logan and Albert Conservation
Society



Keith Brown, Secretary
Brisbane Catchments Network



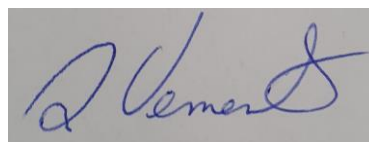
Robyn Jackson, President
Koala Action Gympie Region Inc



Vaughan Kippers, Management
Committee
Centenary and District Environment
Action Inc



Anna Hitchcock
Gladstone Conservation Council



Quinton Clements, Acting Chief Conservation
Officer
WWF Australia



Toby Hutcheon, Campaign Manager
Boomerang Alliance



Darren Kindleysides, CEO
Australian Marine Conservation
Society

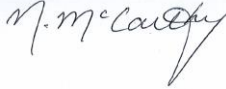


Beth Ballment, Secretary
Wildlife Queensland, Townsville Branch Inc





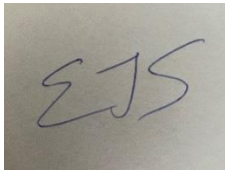
Peter McCallum, Coordinator
Mackay Conservation Group



Narelle McCarthy, Liaison and
Advocacy
Sunshine Coast Environment
Council



Dave Copeman, Director
Queensland Conservation Council



Edward Smith, President
Sustainable Population Australia,
Queensland Branch



Crystal Falknau, Coordinator
North Queensland Conservation
Council Inc.

