



Factsheet updated June 2020

Voluntary Conservation on Private Land

Part 4: Conservation Agreements with the Commonwealth

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Overview

This fact sheet is Part 4 in the 4-part series of fact sheets on voluntary conservation on private land. It outlines general information on commonwealth conservation agreements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (*EPBC Act*) and cooperative management agreements in the Wet Tropics of Queensland World Heritage Area. These agreements may be negotiated with landholders and traditional owners to provide conservation outcomes in certain areas of land.

What are Commonwealth Conservation Agreements?

The *EPBC Act* provides the legal framework for the protection of the environment, especially aspects of the environment that are of national significance. Matters of national environmental significance are nationally and internationally important flora, fauna, ecological communities and heritage places. It also promotes ecologically sustainable development, conservation of biodiversity, and provides for the protection and conservation of heritage. A conservation agreement (agreement) is an agreement between the Australian Government Environment Minister and another person for the protection and conservation of biodiversity in an area of land or sea. The *EPBC Act* is the legislation that allows for the entering into agreements.¹ In order to achieve its objects, the Act promotes and recognises a partnership approach to environmental protection and biodiversity conservation through conservation agreements with landholders.²

A conservation agreement may provide for activities that promote the protection and conservation of the following:

- biodiversity
- the World Heritage values of declared World Heritage properties

- the Commonwealth Heritage values of Commonwealth Heritage places
- the ecological character of a declared Ramsar wetland
- the environment, in respect of the impact of a nuclear action
- the environment in a Commonwealth marine area
- the environment on Commonwealth land³

As well as financial, technical or other assistance from the Commonwealth. An agreement may also provide for monitoring compliance with the agreement.

Entering into a Commonwealth Conservation Agreement

A conservation agreement can require the owner of a place to:

- carry out activities that promote the protection and conservation of biodiversity
- refrain from, or control, activities that may adversely affect the species, ecological community, or habitat covered by the agreement
- permit access to the place by specified persons
- contribute towards the costs incurred under the agreement
- spend any money paid to them under the agreement in a specified manner
- forfeit any money paid to them under the agreement if they contravene the agreement

Conservation agreements are legally binding on the Commonwealth, all other parties to the agreement, and any parties that gain an interest in any part of the area after the agreement is entered.⁴

Conservation agreements are negotiated directly between the Commonwealth and the landowner. Any interested landowner needs to contact the Department of Agriculture, Water and Environment (DAWE) directly.

When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement, and must also be satisfied that the proposed agreement will result in a net benefit to the conservation of biodiversity, and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan.⁵

A list of current conservation agreements under the *EPBC Act* can be found [here](#).

Termination or Variation of Agreement

Section 308 of the *EPBC Act* provides for the variation or termination of an agreement. A conservation agreement may be varied by a variation agreement entered into by the Minister on behalf of the Commonwealth or be terminated by agreement between the Minister and the person or persons bound.⁶

Advantages of Commonwealth Conservation Agreements

There are two advantages to Commonwealth conservation agreements:

1. Commonwealth conservation agreements can bind the Commonwealth and the person or persons with whom the Minister entered into the agreement with, and anyone else who is a successor.⁷
2. The *EPBC Act* allows the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement which can serve as incentives to enter conservation agreements.⁸

Disadvantages of Commonwealth Conservation Agreements

The main disadvantage which comes with Commonwealth conservation agreements is that the Commonwealth may be unlikely to grant them in many situations. The agreements which have been already granted suggest that

they are more likely to be used to offset development with environmental conditions and will only be used for pure conservation purposes in unique areas with high environmental significance.

Therefore, unless the landowner is conducting development which would trigger the EPBC Act, or owns land with a very high environmental significance, it is unlikely Commonwealth conservation agreements will be an available option.

What are Cooperative Management Agreements?

The Wet Tropics Management Authority (the authority) is the body tasked with managing the Wet Tropics of Queensland World Heritage Area. One of the primary functions of the authority is to develop and implement management plans, policies and programs. CMA's are one of the tools that can be utilised in achieving these functions. A CMA is a way of considering and managing the impacts of activities or development that improve management and presentation of the World Heritage Area. CMA's may be useful for landowners who wish to contribute to the management of the Wet Tropics World Heritage, but do not wish to place a long-term instrument on their land. The length of the agreement is negotiated dependent on the impact of the activity or development.

The *Wet Tropics Management Plan 1998* (Qld) (*WTMP*)⁹ provides the legal framework for the management of the World Heritage Area. Within this framework, a cooperative management agreement assists in achieving the 'primary goal' of protection, conservation, rehabilitation, presentation and transmission to future generations of the World Heritage Area.¹⁰ The *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) allows for the authority to enter into and facilitate the entering into of cooperative management agreements with landholders, Aboriginal people particularly concerned with land in the World Heritage Area and other persons.¹¹

NB: at the time of writing the *Wet Tropics Management Plan 1998* is in the process of being reviewed.

Entering into a CMA

Under these CMA's, the relevant parties agree to contribute in some way to achieving the primary goal which can include not participating in or carrying out activities that the party could otherwise lawfully carry out. An example of this could be the clearing of vegetation.

In return, the authority agrees to give a stated consideration to the person, or allows the person to carry out an activity the person could not otherwise lawfully carry out.¹² Under the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld), compensation may become payable if the landholder's interest is injuriously affected by a prohibition agreed between the authority and landholder.¹³ NB: statutory time limits apply.

The authority may enter into the agreement only if it considers the agreement would contribute to achieving the primary goal. As a result, the authority may ask the person for an environmental impact assessment (EIA) or other information relevant to deciding whether to enter the agreement.¹⁴

CMA's are flexible and can be tailored to the landholder's specific situation. Enforcing the terms of a CMA and the consequences for breaches are contained entirely within the agreement rather than the legislation. Alternative mechanisms that are supported by legislation can include nature refuges or voluntary declarations.

The World Heritage Area is approximately 85% national park meaning it is subject to regulation under the *Nature Conservation Act 1992* (Qld) (*NCA*).¹⁵ This means the Queensland Parks and Wildlife Service management of national parks must be consistent with the regulations under the *NCA* and *WTMP*. It may therefore be more difficult to establish a CMA in a national park compared to other parts of the World Heritage Area and this is because the *WTMP* cannot allow something which is illegal or controlled under other legislation, for example the *NCA* which also provides for the management of protected areas.¹⁶

The Wet Tropics Management Authority can be contacted via:

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¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s305(1).

² *Ibid* s3(2)(g).

³ *Ibid* s304.

⁴ *Ibid* s307.

⁵ *Ibid* s305(2).

⁶ *Ibid* s308.

⁷ *Ibid* s307.

⁸ *Ibid* s306(1)(e).

⁹ *Wet Tropics World Heritage Protection and Management Act 1993* (Qld).

¹⁰ *Ibid*.

¹¹ *Ibid* s10.

¹² *Wet Tropics Management Plan 1998* (Qld) s41.

¹³ *Wet Tropics World Heritage Protection and Management Act 1993* (Qld) s57.

¹⁴ *Wet Tropics Management Plan 1998* (Qld) s41(4).

¹⁵ *Nature Conservation Act 1992* (Qld).

¹⁶ Wet Tropics Authority, 'Cooperative management agreements: a guide for Rainforest Aboriginal People', <https://www.wettropics.gov.au/site/user-assets/docs/CMA%20Information%20guide%20for%20Traditional%20Owners.pdf>.