

Critical analysis of the one-stop shop policy

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One-Stop Shopping: What Will Bilateral Agreements Mean For Environmental Assessment in Tasmania?

Forum, 3 September 2014
Old Woolstore, Hobart



Outline

1. Role of Commonwealth environmental approvals
2. "No surprises": inconsistency between public statements in 2013 and draft approval bilaterals released in 2014
3. Little, if any, gain in efficiency or costs savings
4. "One-Stop Shop" is, in reality, a many-stop shop
5. Road test the proposed Tasmanian approval bilateral: What would happen under the draft approval bilateral if the Gunns Pulp Mill or the Franklin Dam were proposed again?



Apologies
for not
being in
Hobart in
person for
the forum

Western Arthurs above Lake Oberon
Photo: Colin Eustace 2004

1. Role of Commonwealth environmental approvals under EPBC Act

Remember to keep the importance of the EPBC Act in perspective.

There are 200-400 referrals under the EPBC Act each year.

There are >250,000 development applications under State and Territory planning laws each year.

>250,000 development applications under State and Territory planning laws each year

Overall number of Development Applications by Jurisdiction

Table 1: Number of development applications in 2008/09							
QLD	NSW*	VIC*	TAS	SA	WA	ACT*	NT
23,609 (est)	87,056	54,162	8,997	70,852	4,921	1,319	921

Source: Local Government and Planning Ministers' Council, *First National Report on Development Assessment Performance 2008/09* (COAG, Canberra, 2010), <http://www.coag.gov.au/node/82>. Note: this figure does not include mining, petroleum or offshore applications.

For Tasmania, the figures are for DAs under the *Land Use Planning and Approvals Act 1993* (Tas).

While projects are very rarely refused under the EPBC Act, it plays an **important role in overseeing State government approvals**, particularly as a check on large State infrastructure projects

(e.g. Traveston Crossing Dam proposed by Qld Govt in 2009 and refused under the EPBC Act).

The proposed 'One-Stop Shop' undermines one of the key functions and benefits of the EPBC Act in practice – to provide an appropriate level of oversight for State government decisions.

2. "No surprises"

Inconsistency between public statements in 2013 and draft approval bilaterals released in 2014

"Mr Hunt said the federal opposition was having 'very serious discussions' with all of the Coalition states to quickly implement one-stop-shop agreements for environmental approvals.

'Some matters would be reserved where the commonwealth would be the one-stop shop but overwhelmingly it would be the states,' Mr Hunt said.

The areas where the federal government would retain ultimate control include offshore commonwealth waters, nuclear matters and projects for which the state was the proponent."

Lloyd G, "Libs Plan to Dismantle Carbon Laws", *The Weekend Australian* (18-19 May 2013), pp 1 and 4.

The three of the four draft approval bilaterals that have been released at this point (NSW, ACT and Tasmania but not Qld) retain federal control over decisions involving Commonwealth marine waters.

None of the four draft approval bilaterals retain for the federal government:

"nuclear matters and projects for which the state was the proponent."

"Escalation process" & suspension & cancellation processes in draft approval bilaterals potentially allow Federal Environment Minister to step back.

(see sections 16 & 17 of draft Tasmanian approval bilateral & ss 57-64 of EPBC Act)

Uncertain how this will be implemented.

3. Little, if any, gain in efficiency and cost savings under One-Stop Shop

See discussion in McGrath C (2014) "One stop shop for environmental approvals a messy backwards step for Australia" 31(3) *Environmental and Planning Law Journal* 164-191 (written prior to draft approval bilaterals being released)

Two types of bilateral agreements under the EPBC Act

Assessment bilaterals – substitute state EIA procedure for EIA under EPBC Act but Commonwealth retains ultimate decision on approval or refusal.

Approval bilaterals – allow state to make ultimate decision.

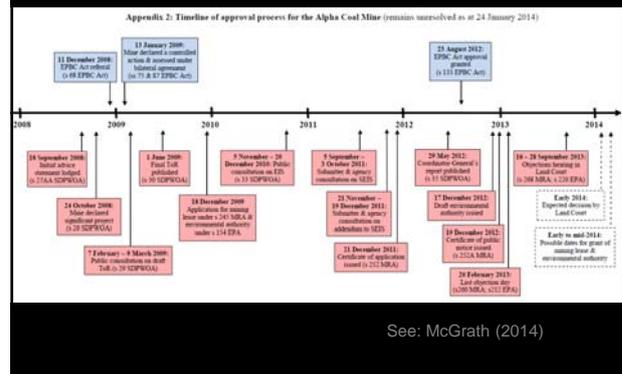
Most costs and delay for projects occur in meeting State and local government approval requirements.

Existing assessment bilateral agreements minimise duplication due to EPBC Act.

Very few projects are significantly delayed under the EPBC Act.

There are a few exceptions: Gunns Pulp Mill

Qld example: Alpha Coal Mine



4. "One-Stop Shop" is, in reality, a many-stop shop

PUP to block water trigger being included in One-Stop Shop



<https://theconversation.com/coalitions-environmental-one-stop-shop-is-falling-apart-30965>

Draft Tasmanian Approval Bilateral (and NSW & ACT drafts) does not include Commonwealth marine areas (ss 23 & 24A EPBC Act)
 [Qld draft approval bilateral does include these]

DRAFT FOR CONSULTATION

Schedule 1 – Declared class of actions

2.2 An action in a class specified in item 4.1 of this Schedule does not require approval under Part 9 of the EPBC Act for the purposes of the following provisions of Part 3 of the EPBC Act:

- (a) sections 12 and 15A (World Heritage properties);
- (b) sections 15B and 15C (National Heritage places);
- (c) sections 16 and 17B (declared Ramsar wetlands);
- (d) sections 18 and 18A (listed threatened species and communities);
- (e) sections 20 and 20A (listed migratory species);
- (f) sections 21 and 22A (nuclear actions);
- (g) sections 24D and 24E (actions involving coal seam gas development or large mining development with significant impact on water resource).

Gunns Pulp Mill could not be fully assessed under proposed Tas Approval Bilateral




Minister for the Environment and Water Resources

Notification of DECISIONS ON CONTROLLED ACTION, DESIGNATION OF PROPONENT AND ASSESSMENT APPROACH

Gunns Limited Bleached Kraft Pulp Mill, Bell Bay, Tasmania (EPBC 2007/0385)

The following decisions have been made under Section 75 and Section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action	
proposed action	To construct and operate a bleached Kraft pulp mill at Bell Bay, Tasmania, and associated infrastructure.
Referral decision: Controlled action	
status of proposed action	The proposed action is a controlled action. The project will require assessment and approval by the Australian Government before it can proceed.
relevant controlling provisions	The project is likely to have a significant impact on: <ul style="list-style-type: none"> • Listed threatened species and communities (sections 18 & 18A) • Listed migratory species (sections 20 & 20A) • Commonwealth marine areas (sections 23 & 24A)

Controlled action decision on Gunns Pulp Mill, 2 May 2007

The draft Qld, NSW and Tasmanian approval bilateral agreements cover only a small fraction of total State environmental approvals.

The many thousands of development approvals made by local governments are not included.

Most of the >250,000 development applications under State and Territory planning laws each year are not included in the One-Stop Shop

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- State approvals included in draft Tasmanian Approval Bilateral**
1. Project of State significance approved under Pt 3 of the *State Policies and Projects Act 1993* (Tas)
 2. Action authorised by environmental protection notice under the *Environmental Management and Pollution Control Act 1994* (Tas) by the Board of the EPA or by RMPAT.
 3. Action authorised under ss 57(6) or 58(2) by under the *Land Use Planning and Approvals Act 1993* (Tas) by the Board of the EPA.
 4. Project of regional significance carried out with a special permit under Div 2A, Pt 4 of *Land Use Planning and Approvals Act 1993* (Tas)

State approvals included in draft Tasmanian Approval Bilateral **do not include local government planning decisions**

5. Road test the proposed Tasmanian approval bilateral:

What would happen under the draft approval bilateral if the Gunns Pulp Mill or the Franklin Dam were proposed again?



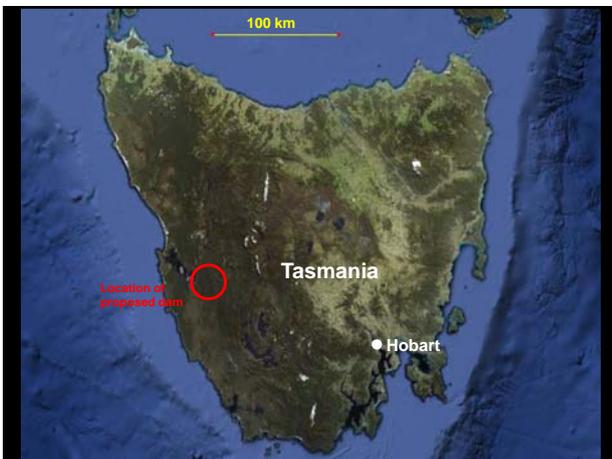
Image source: Gunns Ltd / The Australian

Gunns Pulp Mill at Bell Bay could not be fully assessed under draft Tasmanian Approval Bilateral because it does not cover impacts on Commonwealth marine areas (ss23 & 24A EPBC Act), which were one of the biggest issues for the pulp mill.

What would happen under the draft Tasmanian Approval Bilateral if the Franklin Dam was proposed again?



Rock Island Bend by Peter Dombrovskis. Used with the kind permission of Liz Dombrovskis.





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Would the Federal Environment Minister use the “escalation process” / call-in power in the draft approval bilateral?

Political risks for Commonwealth in “washing its hands” of highly contentious disputes like the Franklin Dam.

Riding in the background is the political reality that it will be extremely difficult for the Commonwealth Government to attempt to “wash its hands” of contentious environmental disputes. The defeat of the Coalition Government led by Prime Minister Malcolm Fraser in 1983 for refusing to intervene to stop the Gordon-below-Franklin Dam is so well known that it seems impossible in political terms that the Commonwealth Government could attempt to take a similar stance again in such a dispute. The Traveston Crossing Dam is a recent example of a dispute where the political stakes were high.

McGrath C (2014) “One stop shop for environmental approvals a messy backwards step for Australia” 31(3) *Environmental and Planning Law Journal* 164-191 at 189.

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