

IMPACT!

A NATIONAL JOURNAL OF ENVIRONMENTAL LAW

Issue 97, 2016 // www.edonsw.org.au



IN THIS ISSUE: *Australia's environment: Breaking the One-stop-shop deadlock*



Environmental Defenders
Office Australia



DEFENDING THE ENVIRONMENT
ADVANCING THE LAW



From the editor

As leaders in public interest environmental law, EDOs of Australia aim to bring you cutting-edge and considered content on the issues that interest you. To this end, each edition of **IMPACT!** features a single author's in-depth analysis of and commentary on a recent development in environmental law and policy.



In this edition, Nari Sahukar, EDO NSW's Senior Policy and Law Reform Solicitor, explores the 'One-stop shop' agenda for environmental approvals. Under this agenda, the Australian Government has made moves to devolve important Commonwealth powers of assessment and approval for projects likely to significantly impact on matters of national environmental significance, including World Heritage properties, threatened and migratory species, wetlands

of international importance, and iconic places like the Great Barrier Reef, to state and territory governments

Nari critically reviews the Australian Government's attempts to implement this agenda, highlights the problems that this poses, and offers suggestions for a smarter approach to reform.

We are grateful to the NSW Environment and Planning Law Association (EPLA) for sponsoring the production of **IMPACT!**.

I trust that you will enjoy our new format. If you have an idea for an article that you'd like to submit for publication in a future edition please contact the editor at emily.ryan@edonsw.org.au or (02) 9262 6989.



2016 Gala Dinner

The Hon. Jane Mathews AO, EDO NSW Chair, requests the pleasure of your company at our annual Gala Dinner.



The Hon. Michael Kirby AC CMG, former Justice of the High Court of Australia, is our keynote speaker and Julie McCrossin is the Master of Ceremonies.

Wednesday 6 April at 6:30pm
The Ballroom, Doltone House Hyde Park
181 Elizabeth St, Sydney NSW

Enjoy fine food, drink and our live fundraising auction.
For more information visit edonsw.org.au/dinner or phone (02) 9262 6989.

BOOK YOUR TICKETS!

Proudly supported by:



IMPACT! is a national journal of environmental law prepared by EDO NSW.

Publisher

EDO NSW

Level 5, 263 Clarence St, Sydney NSW 2000

Tel: (02) 9262 6989 Fax: (02) 9264 2414

Freecall: 1800 626 239 Website: www.edonsw.org.au

ISSN

1030-3847

Copyright

This publication is copyright. It may be reproduced in part or in whole for educational purposes as long as the proper credit is given to EDO NSW and its contributors. © EDO NSW 2016

Editor

Emily Ryan

Australia's environment: Breaking the One-stop-shop deadlock¹

Nari Sahukar, Senior Policy and Law Reform Solicitor, EDO NSW

Introduction

For the last five years, environmental policy around our national environmental law has foundered. The Gillard and Abbott Governments' reform agendas both centred on handing over federal environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to the states and territories (**states**). Without warning, this agenda swept aside the thorough and consultative Independent Review of the EPBC Act (**Hawke Review**) of 2009.²

The so called 'One-stop shop', which would actually involve eight jurisdictions trying to do the Commonwealth's job, has dominated the narrative ever since. Yet this too has stalled amid complexity and controversy, with no clear public benefit and no positive consensus on national environmental goals or direction.

2016 presents an opportunity to reset and redirect environmental law reform – a circuit-breaker to the recent negative policy climate. Leaders and policy-makers need to demonstrate good faith in restoring national environmental policy to an even keel, properly engaging stakeholders and readying Australia's environment, economy and communities to respond to challenges of inevitable change.

This article critically reviews attempts to implement the One-stop shop agenda, and concludes by suggesting a better way forward on national environmental policy and law reform.

National leadership starts with the EPBC Act

The EPBC Act protects Australia's most iconic natural and cultural heritage. It oversees nationally endangered species and ecological communities, internationally-protected migratory species, Ramsar-listed wetlands, national and world heritage areas, the Great Barrier Reef Marine Park, water resources affected by coal and coal seam gas developments, and the impacts of nuclear actions like uranium mining. It also regulates

actions affecting Commonwealth land and waters and the actions of federal agencies.

These are the matters of national environmental significance (**matters of NES**) prescribed by the Parliament on behalf of the people. Australia is also a signatory to international treaties and commitments to protect our global environment and to promote legal rights to participate in decision-making.³ Australians rightfully expect strong environmental protections and accountable decisions in the national interest, including access to justice through the courts.

“2016 presents an opportunity to reset and redirect environmental law reform – a circuit-breaker to the recent negative policy climate.”

While most environmental decision-making happens at the state level, federal oversight of matters of NES is vital because:

- only the Federal Government can provide national leadership on national environmental issues, strategic priorities and increased consistency;
- the Federal Government is responsible for our international obligations, which the EPBC Act implements;
- state environmental laws and enforcement processes are not always up to standard;
- states are not mandated to act (and do not act) in the national interest; and
- state governments often have conflicting interests – as a proponent, sponsor or beneficiary of the projects they assess.⁴

These are important responsibilities. Yet over the last three and a half years, a central plank of national environmental policy has been to hand over federal powers to protect Australia's environmental icons to state planning ministers.

One-stop shop or everything-must-go?

The 'One-stop shop' agenda began as a six-page briefing note from COAG's inaugural Business Advisory Forum. It was accepted overnight by COAG in April 2012, without consultation,⁵ sweeping aside the comprehensive and consultative Hawke Review recommendations of 2009. Then it was dumped eight months later by Prime Minister Gillard, citing complexity and concern about state standards that outweighed any clear public benefit.⁶

The One-stop shop found a new champion in the Abbott Government from 2013. The Government's 'red-tape' reduction drive trained its sights on environmental law. Environmental, climate and water agencies were dismantled. Government and NGO funding was cut. The Senate Environment Committee called an inquiry into 'The Abbott Government's attacks on Australia's environment'. Meanwhile the House of Representatives Environment Committee held its own inquiry to 'Streamline environmental regulation and Green Tape'; and another to probe the Register of Environmental Organisations, which allows the public to give tax-deductible donations. With the One-stop shop and the war on green tape, any semblance of environmental policy consensus broke down.⁷

If the One-stop shop reforms continue as proposed, state planning departments will be solely responsible for assessing and approving projects that impact on matters of NES. The federal Environment Department may retain oversight of proposals affecting Commonwealth land and waters, and actions by federal agencies. It may also continue to oversee impacts on water resources from coal and gas mining, depending on the fate of amendments in Parliament.

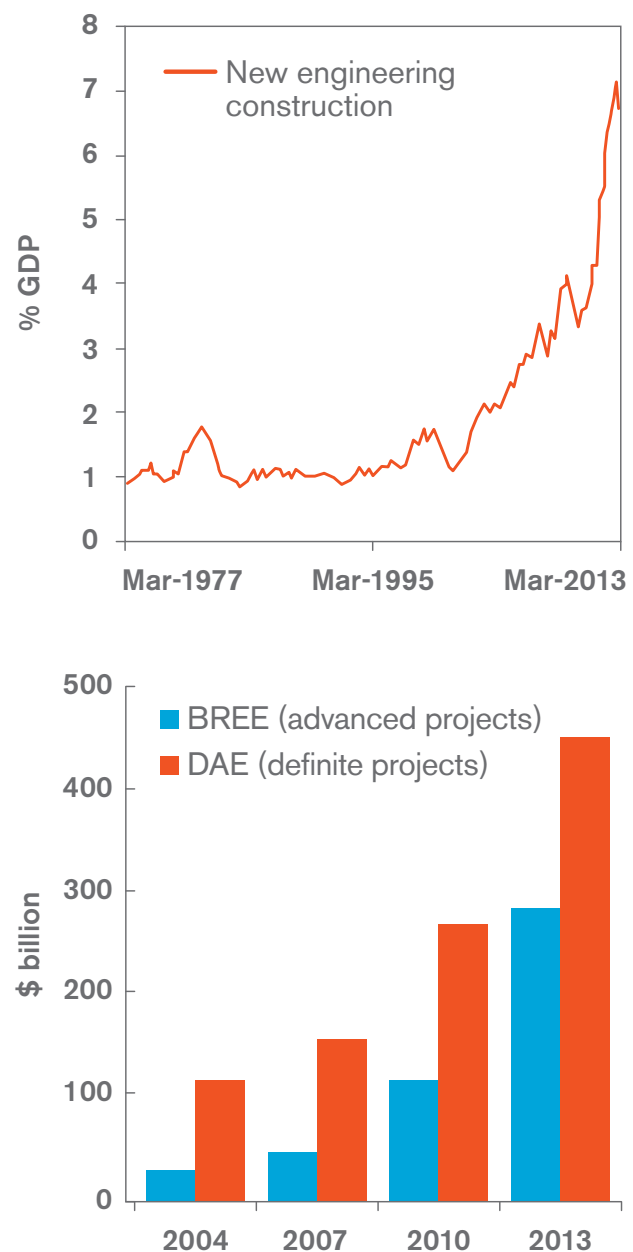
But it's highly doubtful that this approach will improve the efficiency or effectiveness of environmental law, or address our growing environmental challenges. Instead of a strong federal Environment Department doing its job, we will have eight planning departments doing someone else's. This is because the One-stop shop agenda is actually a series of eight 'shops' across the states and territories. Each state will still operate under different major project assessment laws. The number of approval pathways may in fact increase and *fragment* rather than simplify and converge.

The state-based 'shops' have always been responsible for granting development approvals for state-based impacts under state-based laws. That is, assessing project applications and environmental studies, and granting consents, pollution licences and permits with conditions. But assessing and approving impacts on matters of NES is a crucial job for the Federal

Government under the EPBC Act. Until now, the federal Environment Minister has assessed and approved these projects, often imposing more stringent conditions (and in rare cases rejected a few).⁸

Some major project developers, led by the mining industry, claim that federal oversight is unnecessary, duplicative and takes too long. This is despite record investment throughout the EPBC Act's history, and the growing size and complexity of projects over this time – like major mines, rail and port projects (see graphs below).⁹

Figure 1: Investment in major projects has surged.*



*These data are used as rough proxies for investment in major projects.
Source: Productivity Commission, Major Project Development Assessment Processes – Draft Report (August 2013), p. 7.10

At the same time, funding for regulators and cost recovery haven't kept up. State and federal environment agencies face increasing pressure from 'efficiency dividends' and budget cuts.¹¹

"Each state will still operate under different major project assessment laws. The number of approval pathways may in fact increase and fragment rather than simplify and converge."

Attempts to implement the 'One-stop shop'

In September 2013 the Abbott Government committed to establishing a One-stop shop for project assessments and approvals within a year of winning office. This plan had three stages. First, memoranda of understanding were signed with each state and territory in December 2013. Second, new or revised bilateral agreements to delegate certain EPBC Act assessments were agreed by December 2014. Since then, the Government has been working on the final stage – *approval* bilateral agreements. Draft agreements went on mandatory public exhibition in all jurisdictions (except Victoria and the NT) but these have since stalled.

The key difference between the two types of agreement is that assessment bilaterals still give the federal Minister the final nod or refusal. *Approval bilaterals* 'switch off' the EPBC Act for accredited classes of project approvals, such as mines, dams, ports and freeways. They would solely rely on the state government for sign-off on national environmental impacts, and for compliance and enforcement against future breaches or environmental harm.

The EPBC Act has always allowed accreditation of state laws to replace federal assessments and approvals (or vice versa). Limited assessment bilaterals have been in place for years, but approval bilaterals remain highly controversial. Various safeguards and equivalence requirements apply to both kinds of agreement.

Approval bilaterals require greater scrutiny – the idea being that state laws must clearly meet EPBC Act standards before being accredited.¹² In particular, the agreement accrediting the state law must be laid before both houses of federal Parliament, and its accreditation is subject to disallowance in either house for 15 sitting days. In the absence of clear support for the One-stop

shop in the Senate, the Government has not yet signed or laid any approval bilaterals before Parliament.

'Bilaterals Bill' – Relaxing EPBC Act standards to accredit state approvals

Instead of requiring all states to make their legislation stronger and more consistent, in 2014 the Abbott Government introduced a Bill to weaken the EPBC Act's stringent accreditation requirements to fit the types of state processes it hoped to accredit.

The Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 (Bilaterals Bill) was introduced and passed by the House of Representatives in May-June 2014. While it is now stalled in the Senate, if agreed, the Bill would make it easier to switch off federal oversight of national environmental impacts for most developments.

In particular, the Bilaterals Bill would allow state and territory policies and guidelines to replace the legal protections in the EPBC Act – repealing current safeguards that say EPBC protections must be reflected *in state laws*.¹³ Legal protections are markedly different to policies (even policies or instruments made 'under' a law). Laws are subject to parliamentary scrutiny, backed by enforcement provisions and access to the courts. Policies and guidelines can be made or changed overnight by the government of the day. They often have little in the way of accountability or community oversight if a government or developer falls foul of them.

Allowing the Federal Government to accredit state and territory policies instead of laws would seriously weaken the EPBC Act's bilateral agreement provisions. Accreditation should be used to raise and harmonise state assessment standards – not to lower the bar for state approvals.

The Bilaterals Bill includes other concerning amendments. It would significantly expand the Minister's discretion over accreditation decisions, open the way for *local councils* to make national decisions, and allow state project approvals to be accredited retrospectively.¹⁴ The Bill initially sought to allow the states to approve impacts under the 'water trigger' (by removing the current prohibition),¹⁵ but the Government dropped this proposal in the Senate.¹⁶

The Senate debate on the Bilaterals Bill began in September 2015, but was adjourned on the evening of the Abbott-Turnbull leadership ballot. It remains to be seen if and when the Bill will resurface in the 2016 Parliament.

Is federal oversight holding Australia back?

As we have seen, federal involvement in project assessment is triggered only in limited circumstances. If a development or other 'action' could have a significant impact on one or more matters of NES, it must be referred to the federal Environment Department. The Department then decides whether a significant impact is likely (or whether impacts could be avoided by carrying out the project in a 'particular manner'). If a significant impact is likely, the federal Environment Minister must assess and approve (or refuse) the project.

Across Australia, developers and government agencies refer around 300 projects to the Department each year because they may have significant impacts on a matter of NES. Of these, only 100 or so each year will require further assessment by the federal Minister, because it is usually determined there will be no significant impacts.¹⁷ This reinforces that the bar on what needs EPBC assessment is set high.

Of those projects that *are* assessed for federal approval:

- half rely on the proponent's preliminary project documentation;
- one third already rely on existing bilateral agreements (i.e. a single, state-run assessment process which still gives the federal Minister the final say on matters of NES); and
- only one in eight (perhaps a dozen a year) will require a federal environmental impact statement (**EIS**) or public environment report on matters of NES.¹⁸

All this is to say that – rightly or wrongly – very few developments are actually subject to federal assessment, approval or 'delays'. For those that are, federal scrutiny remains a vital arms-length check on state decision-making about complex projects.

Estimated benefits (but no costs?) from the One-stop shop

In late 2014 the federal Environment Department released a report estimating that the One-stop shop could mean 'regulatory savings to business of over \$426 million a year'.¹⁹ However, the report has some significant limitations and assumptions (some of which were acknowledged).

First, the report predicts very limited *direct regulatory savings*, such as only having to deal with one regulator (\$9m a year).²⁰ The public costs to agencies and others negotiating and implementing the reforms – now in their fourth year – is not estimated.

Second, the vast majority of estimated savings were 'reduced delay costs' that boosted the net present value of relatively few large projects.²¹ Critically, the report does not consider whether the additional scrutiny provided by these 'delays' is *justified*. The Act's effectiveness or efficiency cannot be judged on approval timeframes alone. More important is whether the system delivers sustainable outcomes in the public interest. Without this recognition, the logic of 'assessment as delay' could be extended to state processes also (notwithstanding that they assess different impacts). In any case, the report notes 'delay costs are difficult to estimate because they depend on many [project-specific] factors'. Less than 20 projects a year were considered reliable enough to meet the criteria for calculating 'delay savings'.²² Despite this, the One-stop shop would hand over as many approvals as possible.

Third, the Government's report didn't weigh up the benefits of alternative reform options that retain federal approval powers.²³ Alternatives would include savings from improved guidance to proponents, clearer definition of significant impacts, better coordination of state and federal assessments and conditions, a harmonised national threatened species list, and better use of regulatory cost recovery. Many such efficiencies have been identified in the Hawke Review and other reports since then.²⁴

Fourth, the Government's report assumed the One-stop shop *wouldn't increase state approval times* or procedures. Yet the states will have to act in place of the Federal Government – assessing national impacts, seeking further information from developers and consulting with federal agencies and advisory bodies. It is unrealistic to claim the states could undertake the additional work required to do the federal Department's job without allocating additional time, resources, expertise and compliance oversight.

Finally, true social and environmental costs of the One-stop shop must be visible. There are examples and risks of such costs:

- The 2011 *State of the Environment* Report notes: 'Our unique biodiversity is in decline, and new approaches will be needed to prevent accelerating decline in many species.'
- In 2012 and 2014, EDOs of Australia conducted an *Assessment of the Adequacy of Threatened Species and Planning Laws*, which found that no state planning and biodiversity laws meet federal standards.²⁵

- A 2013 Senate Inquiry warned of a 'race to the bottom' as states compete to streamline environmental laws and attract investment.²⁶
- In 2014, CSIRO social research found that the One-stop shop could 'erode public confidence in legislative and regulatory power', and in governments' 'capacity to hold the mining industry to account.'²⁷

Maintaining environmental standards?

One-stop shop supporters claim there will be no slippage of environmental protections, but environmental and public participation outcomes are long-term and harder to measure than approval times. In any case, before such claims could be verified, Governments need to significantly boost their focus on data collection and consistency, post-approval monitoring and enforcement, and continuous improvement of environmental performance.²⁸ New initiatives like the *National Principles for Environmental Information* may be a start, but commitments to date have not matched this need.

The federal Department has developed a set of assurance standards to hold the states and territories to 'high environmental standards' under the One-stop shop. These essentially summarise EPBC Act requirements and departmental practice. The Government has said each state must meet these standards to be accredited. While such standards could improve consistency in theory, their negotiation was undermined by the Abbott Government's upfront commitment to hand over approvals. As a result, the standards have not led to widespread state agreement to improve their laws. Instead, the Bilaterals Bill has been introduced to make accreditation easier.

Language has also slipped from 'improving environmental standards' as recommended by the Hawke Review to 'maintaining' them. This implies that Australia's environmental challenges are all in hand, when in fact the available indicators identify negative trends in areas such as biodiversity, climate change, water and soil management.²⁹ The Hawke Review identified 71 areas for improvement. The *State of the Environment Report 2011* also called for new tools and greater resourcing to deal with historical and emerging challenges.

Doing better: The need for a strong federal role in environmental protection

How can we maintain and improve environmental standards? To begin with, a new National Environment Commission is needed to provide strategic advice, oversight and special audit functions (including for

assessment bilateral agreements). A set of clear national sustainability indicators and environmental accounts is also needed to meaningfully chart progress. These have all been recommended to Government on several occasions in the last five years.³⁰ Australia would also benefit from a systematic 'national ecosystem assessment' as the UK has done over the same period.³¹ This would give the public and policymakers specific information about the status and character of our natural assets, and reinforce the many reasons to protect them.

As we await the 2016 State of the Environment Report, it is worth remembering a further key finding of the 2011 Report:

*Our environment is a national issue requiring national leadership and action at all levels... The prognosis for the environment at a national level is highly dependent on how seriously the Australian Government takes its leadership role.*³²

A range of alternatives are available to strengthen environmental laws without switching off EPBC Act approvals.³³ EDOs of Australia has called for four things:

First, the Government needs to revisit a range of useful recommendations in the Independent Review of the EPBC Act (Hawke Review package) to improve both environmental protection and regulatory effectiveness.³⁴ EDO NSW has put forward priority reforms in a forthcoming article for Humane Society International Australia.³⁵

Second, state environmental *assessment* laws and standards must be strengthened through a 'highest common denominator' approach, in line with recommended federal improvements. Stronger state laws would include, for example:

- rigorous and comprehensive assessment standards that aim to increase national consistency and achieve ecologically sustainable development;
- greater transparency and public participation at all stages of decision-making;
- more accountable and less discretionary frameworks for governance and decision-making, overseen by the courts and community 'standing'; and
- leading practice monitoring, enforcement, reporting and improvement.

Any accreditation of state *assessment* processes must be based on clear and equivalent standards enshrined in state legislation.

Third, even if states and territories amend their laws and show they can be entrusted with *assessing* impacts

on the national environment, the Federal Government must maintain its final approval powers as custodian of our national and international obligations.

Fourth, all levels of government – and everyone else with a stake in Australia's future – are invited to join the conversation about the next generation of environmental laws.³⁶ That is, how we can arrest the systemic problems of climate change, biodiversity loss and resource over-consumption in fair and effective ways. This is an exciting prospect as Australia seeks to play its part in the United Nations Sustainable Development Goals and the Paris Agreement (COP21) of 2015. It requires a rethink of how we integrate global, national, state and local environmental values into all kinds of decision-making systems. This is a challenge too important for any government, or any other sector, to tackle alone.

Conclusion

This article has outlined fundamental concerns about the so-called 'One stop shop' – to hand over national environmental approvals to the eight states and territories.³⁷ Underpinning this analysis is the conviction that Australia's environment cannot be protected without strong federal environmental laws and oversight of our unique biodiversity and heritage.

While the ink is dry on bilateral *assessment* agreements with all states and territories, the Federal Government is still officially pursuing *approval* agreements nationwide. This is despite entrenched concern from communities, environmental stakeholders and some governments that handing over EPBC approvals is a step too far.

2016 presents an opportunity for the Turnbull Government to redirect its energy on environmental law reform, build a greater consensus and restore trust in national environmental governance. This would break the policy deadlock of the controversial One-stop shop agenda which has stymied real EPBC Act reform since 2012. Without a reset on environmental law reform, the deadlock may continue.

As things stand, the Government would have to convince the Australian Parliament that state and territory approval processes *do* meet federal standards. Approval bilateral agreements would be subject to the 15 sitting-day disallowance period set out in the EPBC Act. This is an important safeguard in the circumstances.

Instead of requiring all states to make their legislation stronger and more consistent, the Government's 2014 Bilaterals Bill, if passed, would weaken the EPBC Act's stringent requirements for accrediting state laws. The

Government has also bolted-on a list of requirements in the draft approval bilateral agreements to encourage states to meet its assurance standards. Logically, this would require additional state resourcing, time, expertise and oversight. All of which suggests that state laws are not so robust.

This article is not an argument for the status quo, but for a smarter approach to reform. Bilateral agreements that accredit weak laws or policies are no substitute for a strengthened EPBC Act. There are many options for improvement that do not switch off federal approvals. Ultimately though, if the One-stop shop comes to pass, there will be eight state 'shops', but no strong federal oversight of our national environment – an asset that all Australians have an interest in protecting.

-
- 1 *Parts of this paper draw on a previous article that appeared in the NSW Community Legal Centre publication, On the Record, in November 2014.*
 - 2 Hawke, A., *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (2009), at www.environment.gov.au/resource/australian-environment-act-report-independent-review-environment-protection-and-biodiversity-conservation-act-1999. Dr Hawke was assisted by an expert panel: Prof. Tim Bonyhady, Prof. Mark Burgman, The Hon Paul Stein AM and Ms Mary Warnock.
 - 3 For example, the *World Heritage Convention*, *Convention on Biological Diversity*, *Ramsar Convention on Wetlands*, *Convention on the International Trade of Endangered Species*, *Rio Declaration on Environment and Development*.
 - 4 See ANEDO, 'Submission to the Senate Standing Committee on Environment and Communications regarding the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*'. Available at: www.edo.org.au/policy/ANEDO-Submission-EPBC-Retaining-Federal-Approval-Powers-Bill-2012.pdf.
 - 5 Council of Australian Governments communique, 13 April 2012 at: www.coag.gov.au/node/313#BAF.
 - 6 See: M. Grattan and T. Arup, 'Environmental powers to be kept by Canberra', *Sydney Morning Herald*, 6 December 2012.
 - 7 See for example, B. Debus, 'All living things are diminished: breaking the national consensus on the environment' (2014), <http://apo.org.au/resource/all-living-things-are-diminished-breaking-the-national-consensus-on-the-environment>.
 - 8 Only 10-20 projects have been refused over the life of the Act (the higher figure includes early refusals due to 'clearly unacceptable' impacts). See for example, The Australia Institute, 'Key administration statistics – 3rd Party Appeals and the EPBC Act' (2015).
 - 9 See: Productivity Commission, *Major Project Development Assessment Processes – Draft Report* (August 2013), p. 7
 - 10 Key: BREE = Bureau of Resources and Energy Economics. DAE = Deloitte Access Economics.
 - 11 See e.g. S. Maher, '150 Environment Department jobs axed under Labor efficiency dividend', *The Australian*, 23 October 2013; B. McCormick, *Budget Review Index 2014-15 – Environment Parliamentary Research Papers*, Australian Parliament House; ANAO Performance Audit, *Managing Compliance with [EPBC] Act 1999 Conditions of Approval* (2014), para 33.
 - 12 See for example, EPBC Act, Part 5, Division 2.
 - 13 *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014*, Schedule 3 Part 2 (items 6-9). See also Revised Explanatory Memorandum to the Bill, pp 21-22.
 - 14 See *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014*. For example: widening the Minister's discretion in deciding what can be accredited (Bill Schedule 5 item 6, amending s 46(3)); potentially shouldering local councils with federal approval powers for matters of NES (Bill Schedule 5; Revised Explanatory Memorandum, p 28); and retrospectively accrediting past state project assessments and approvals (Bill Schedule 2 item 17; Schedule 5 item 1).

- 15 The 'water trigger' was enacted in June 2013. It makes significant impacts of coal mines and coal seam gas (CSG) projects on water resources a new matter of NES. These impacts require federal assessment and approval after advice from an Independent Expert Scientific Committee, established under the EPBC Act. As debate raged over the One-stop shop, the Parliament passed safeguards sponsored by independent MP, Tony Windsor, to prevent approval bilateral agreements applying to projects assessed under the 'water trigger'. This prohibition ensured that coal mines and CSG projects assessed for their water impacts could not be approved by state governments alone.
- 16 'Parliamentary Business – Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014' (accessed December 2015) <<http://www.aph.gov.au>>.
- 17 See for example, Australian Government Department of the Environment, *Regulatory Cost Savings under the One-stop shop for environmental approvals* (2014), p 8. Table 1 notes 588 assessments from 1537 referrals (of infrastructure, mining and energy and residential and commercial projects) over the 5 years to June 2013.
- 18 See Productivity Commission, *Major Project Development Assessment Processes – Draft Report* (August 2013), Table 7.3 (p 141).
- 19 *Regulatory Cost Savings under the One-stop shop for environmental approvals* (September 2014).
- 20 Estimate of \$9 million in 'administrative savings' per year, across some 300 project referrals.
- 21 i.e. The Department's methodology calculated how 'days of delay', attributed to federal processes, would affect the net present value of projects under a one-stop shop (estimated at \$417m a year). These are presumably based on initial project valuations calculated and submitted by the developer.
- 22 Australian Government, *Regulatory Cost Savings under the One-stop shop for environmental approvals* (2014). The report identified 52 projects over the three years to 2013 as a representative sample that met its criteria for calculating such 'delay savings'.
- 23 The report on *Regulatory Cost Savings* assumes 'Projects would be assessed under current approval processes if the One-stop shop did not proceed.' (p 15)
- 24 See for example ANEDO (now EDOs of Australia), *Submission to Productivity Commission Draft Report Major Projects Assessment* (2013), at <http://www.edo.org.au/development1>; and Wentworth Group of Concerned Scientists, *Statement on Changes to Commonwealth Powers To Protect Australia's Environment* (2012), at www.wentworthgroup.org;
- 25 See: https://d3n8a8pro7vnmx.cloudfront.net/edonsw/pages/1668/attachments/original/1410138351/Assessment_of_the_adequacy_of_threatened_species_planning_laws-V5.pdf?1410138351.
- 26 Senate Environment and Communications Committee, *Report of Inquiry into the EPBC Amendment (Retaining Federal Approval Powers) Bill 2012*, majority report, March 2013, at 2.71.
- 27 Moffat et al., *Australian attitudes towards mining – Citizen survey* (2014), p 14 at <http://www.andev-project.org/wp/wp-content/uploads/2014/09/Australian-Attitudes-Towards-Mining-Report.pdf>.
- 28 See for example, Australian Government, *State of the Environment 2011*; Australian National Audit Office, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval* (2014); NSW Chief Scientist and Engineer, *Independent review of coal seam gas activities in NSW* (2014).
- 29 See for example, *SoE 2011*: <https://www.environment.gov.au/science/soe/2011-inbrief/headlines>.
- 30 See for example, Hawke Review (2009), chapter 19 and recommendations 67 and 71; National Sustainability Council, *Sustainable Australia Report 2013*, 'Sustainability Indicators for Australia' (2013); ABS, Statistics By Topic, 'Environmental Accounts' at <http://www.abs.gov.au>; and Wentworth Group of Concerned Scientists, *Accounting for Nature – Quick Guide* (December 2013).
- 31 UK National Ecosystem Assessment, <http://uknea.unep-wcmc.org/>. Relevantly, the Hawke Review recommended 'ecosystems of national significance' should be a new matter of NES (recommendation 8).
- 32 Australian Government expert committee, *State of the Environment 2011*, 'In brief', at 9.
- 33 See for example ANEDO (now EDOs of Australia), COAG *Environmental Reform Agenda: ANEDO Response - In Defence of Environmental Laws* (2012), and *Submission to Productivity Commission Draft Report Major Projects Assessment* (2013), both at <http://www.edo.org.au/development1>; Wentworth Group of Concerned Scientists, *Statement on Changes to Commonwealth Powers To Protect Australia's Environment* (2012), at www.wentworthgroup.org; and Senate Environment and Communications

References Committee, *Effectiveness of threatened species and ecological communities' protection in Australia* (2013), at www.aph.gov.au.

- 34 Areas that the Hawke Review identified to strengthen the EPBC Act included cumulative impact assessment; a harmonised threatened species list; a National Environment Commission; and new triggers for projects with significant greenhouse pollution and for Ecosystems of National Significance.
- 35 See N. Sahukar, 'EPBC Act Reform: 12 steps to improving our national environmental law' (forthcoming), *Humane Society International, Technical Bulletin*, Issue 27, 2016, www.hsi.org.au/publications/show/technical-bulletin.
- 36 See for example APEEL: the Australian Panel of Experts in Environmental Law, convened by the Places You Love Alliance of over 30 environmental NGOs, at www.aheel.org.au.
- 37 EDOs of Australia made submissions on draft bilateral agreements in each State and Territory, at www.edo.org.au.

We hope you enjoyed reading
this edition of **IMPACT!**

Please don't forget to purchase
your tickets to EDO NSW's 2016
Gala Dinner.

Without your generous support,
EDO NSW could not exist.



NSW
EDO 2016 Gala Dinner
Wednesday 6 April

CLICK HERE TO BOOK YOUR TICKETS



**Environmental Defenders
Office Australia**