Submission on Proposed EPBC Act Amendments 2014

Background

It is understood that the proposed amendments address Government support for a 'one stop shop' approach to the assessment of activities affecting 'matters of national environmental importance' under the EPBC Act.

This includes a three-stage process with each of the 'willing jurisdictions' (States and Territories) comprising:

- signing a Memorandum of Understanding;
- agreement on bilateral assessments and updating any existing agreement with the states;
- negotiation of approval bilateral agreements within 12 months.

On 14 May 2014, Minister Hunt introduced a bill into Parliament that would:

- ensure that controlled actions are referred to and assessed by the 'willing jurisdictions' and not the Commonwealth under approval bilateral agreements;
- allow for flexible review and amendment of approval bilateral agreements;
- enable the Minister to accredit state and territory approval decisions on large coal mining and coal seam gas developments that are likely to have a significant impact on a water resource (commonly known as the 'water trigger').

My comments draw on experience from my 30 years as a practicing professional urban and regional planning in South Australia, Queensland and Western Australia as well as academic environmental studies.

Comments on EPBC Act and Proposed Amendments

The EPBC Act is important national legislation introduced by a Coalition government. It provides greater assurance that projects will be subject to impact assessment relating to matters of national environmental significance, than many State approval systems are designed to do. That is not to deny the existence of State impact assessments that are methodologically sound. However, among the many small, medium and even major projects which are not subject to rigorous or full impact assessment in each State or Territory every year, there are some which affect NES values. A subdivision refused by Ian Campbell on grounds of risk to an endangered Glossy Black-cockatoo population in the township of American River, Kangaroo Island is a case in point.

Urban growth in some metropolitan and coastal regions is a serious threat to biodiversity. Nonetheless, in planning for new urban growth areas, pressure could be directed so that it does not impinge on important environmental assets. The biodiversity conservation measures to address NES values in planning of Melbourne growth corridors is one attempt to reconcile competing objectives in urban planning using Strategic Impact Assessment (SIA). Yet, this is one of only two area specific assessments cited on the Department of Environment – the other being Magnetic Island, Townsville. Proper SIA was lacking in preparation of the 2010 planning strategy for Greater Adelaide, and to the best of my knowledge, SIA has not been practiced in relation to land use planning in South Australia since introduction of the EPBC Act, despite examples from the 1980s.

Increased protection of the Australian environment has often relied on national leadership. Measures to stem the decline in the health of the Murray-Darling system and protection of World Heritage reef and rainforests which underpin North Queensland's tourism industry are two prime examples of this. The Murray-Darling system, however, is still highly vulnerable, and, while the World Heritage listing of the Wet Tropic Rainforest proved to a major catalyst for tourist visitation and yielded major economic benefit to the region, a political compromise, excluded lowland rainforests of outstanding biodiversity value on the Daintree Coast.

An economic study estimated that Direct Financial Value from tourism and recreation in the Daintree region (ie. not the whole of the Wet Tropic Region of which about half is listed) at that time totalled $141.7 million per annum, while the Total Direct and Indirect Financial Value from tourism and recreation within the Daintree was estimated to be $395.6 million (Kleinhardt-FGI Corporate Advisers, 2002).

In terms of important rainforest land adjoining the Wet Tropics WHA in the Daintree, of the various approaches to manage urbanisation and other pressures, direct conservation investment, private and public, including

acquisitions and use of local clearing and planning controls, far more so than the EPBC Act referral system, were the more effective in reducing environmental threats in an iconic eco-tourism destination.

However, it is not uncommon for local and State approval systems to disregard NES values. Some planning systems contain better mechanisms for incorporation of environmental factors than others. Policy failure in this regard may be due to absence of local champions, or of diligence on the part of those doing 'State interest' checks, or of provision of the right type of information at the right time (eg. in strategic planning), or enough effort by the Commonwealth to educate, support and guide decision-makers.

South Australia's model planning policies (the South Australian Planning Policy Library) make no reference to NES matters (though there are very generic statements relating to natural resources as well as policies on State and local heritage).

The effectiveness of the EPBC Act has been mixed. This may be attributed factors like the design of the legislation (eg. relying on referrals which are not always forthcoming), resourcing of administration, education and decision-support tools, failure to control all matters of national significance (ie, technically they are, but not legally), and waxing and waning and sometimes negligent government attitudes towards conservation of natural and cultural heritage values.

There is evidence that different sectors are unevenly regulated as some tend not to refer actions as readily as others (MacIntosh & Wilkinson, 2005). In my experience, the wind industry, for example, has tended to refer if in doubt more so than other industries. Uneven application of the EPBC Act coinciding with uneven use of impact assessment processes in State and Territories introduces an element of haphazardness in the treatment of risk to NES value – though the Act was supposed to provide for a more systematic approach than the more 'ad-hoc' nakedly political approach that existed before. Wide Ministerial discretionary powers to call-in matters for formal impact assessment are a factor – and there are no uniform, nationally-applied (jurisdiction-by-jurisdiction) criteria for this.

There is duplication but this coexists with gaps and deficiencies which could expose NES values to considerably greater risk in a watered-down, devolved national approach. Even patchier protection is a likely result if State processes are not fit for purpose as many of them clearly are not at present. Improvement of a greater range of State processes than those using credible impact assessment methodology is not a credible short-term proposition, even if the Commonwealth is prepared to use leverage enhancements. It likely requires significant legislation change as well as policy and capacity development which could not be expect to happen overnight.

Bilateral agreements to integrate appropriate and rigorous assessment steps are a logical feature as is the ability of the Commonwealth Minister to terminate an agreement if the State or Territory is not meeting a high standard in its assessments. The first is good project management. The other is being environmentally responsible.

The use of approval bilaterals, however, could abrogate national responsibility where a State or Territory government has a vested interest in a project or known low regard for affected NES values. If the only real leverage the Commonwealth Minister has is the threat of ending an agreement, this would appear to be viable in rather limited political circumstances, and is at odds with the ideal of a predictable, rational, systematic approach. The stakes are far higher than where the Commonwealth Minister decides a matter based on the merits and evidence in the spirit of the Act. In the context of two governments of a similar political stripe, abandoning an agreement is a non-credible option.

Given the obvious shortcomings of some State processes, hasty or over-zealous attempts to introduce more flexibility in 'devolving of responsibility' to States and Territories without expert, independent audit of State legislation and policies - a monumental task - risks accreditation of processes which are profoundly inadequate, unreliable or inconsistent at meeting obligations under the Commonwealth Act.

This would not be a transfer of responsibility, more like leaving protection of NES values to chance. It would undermine protection of natural and cultural heritage and a healthy environment. It would be unfair to proponents or sectors still subject to more rigorous processes.

REFERENCES:

Kleinhardt-FGI Corporate Advisers (2002): Tourism & Recreation of the Daintree and Fraser Island, prepared for the Australian Tropical Research Foundation (AUSTROP).

MacIntosh, A & Wilkinson, D (2005): Environment Protection and Biodiversity Conservation Act: A Five Year Assessment, The Australia Institute, Discussion Paper Number 81.

Jim Allen, 29 May 2014