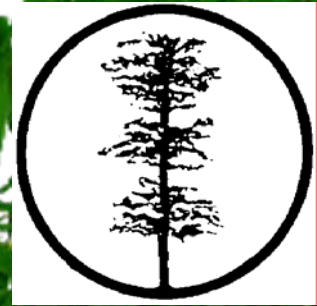


Environmental Defenders Office Qld



A public interest environmental community legal
centre

Proposed Traveston Dam, Queensland

Revised Version
September 2007

Franklin Dam, Tasmania, Australia

- ★ Most famous proposed dam in Australian legal history is the dam proposed in the early 1980's for the wild Franklin river
- ★ The Commonwealth used its constitutional powers (confirmed by the High Court in 1983) to overrule the Tasmanian government & stop the dam



Traveston Dam, Queensland

- ★ The Dam is proposed by the State for the Mary River, north of Brisbane
- ★ The need for the dam is disputed
- ★ The dam will flood good farm land, dislocate communities, & threaten listed species



Role of the Queensland State government

- ★ The State government proposes the Dam
- ★ The State government has already changed some State laws to reduce community challenges to the Dam on environmental grounds
- ★ This talk will focus on Cth laws



EPBC Act

the Commonwealth
*Environment
Protection and
Biodiversity
Conservation Act 1999*



Other dams....

- ★ The Cth EPBC Act has applied to other Qld dams
- ★ Paradise Dam on the Burnett River – built
- ★ Proposed Nathan Dam for central Queensland -- still under Cth assessment



EPBC Act jargon:

- ★ **Triggers**– something which activates the EPBC Act
- ★ **Ramsar Wetlands**– wetlands which are listed under the Ramsar Convention on Wetlands of International Importance.



EPBC Act jargon:

- ★ **Matters of National Environmental Significance (MNES)**– matters protected by the Act, including threatened species. These are listed in full later.
- ★ **Bilateral agreements**– agreements between the Cth and States/Territories to accredit assessment or approval processes for the EPBC Act.



EPBC Act jargon:

- ★ **Controlled action-** action that the Cth has decided requires Cth assessment



The EPBC Act will apply to a development if it is:

- ★ **A Commonwealth Action** which has, will have or is likely to have a **significant impact on the environment;**
- ★ An action (e.g. building and operating a dam) which has, will have or is likely to have a **significant impact on a matter of national environmental significance (MNES)**



Step 1 – A proposed action

An “action” does not include funding or granting an approval, but means:

- ★ A project;
- ★ Development;
- ★ Undertaking;
- ★ Activity;
- ★ Any alteration or increase in the above;



Matters of National Environmental Significance (‘MNES’)

- ★ World Heritage areas **
- ★ Ramsar Wetlands **
- ★ Listed threatened species and ecological communities **
- ★ Listed migratory species **



Matters of National Environmental Significance (‘MNES’)

- ★ Nuclear actions
- ★ Commonwealth marine environment
- ★ Listed National Heritage Places



Finding out which Areas and Species are listed

- ★ The Cth Environment and Heritage Minister is responsible for keeping lists
- ★ This information can be found on the EPBC Act section of the Department's website at www.deh.gov.au/epbc/
- ★ Note Mary River Turtle, Cod, & Queensland lungfish, listing of lungfish effective at Aug 2003



What does “significant impact” mean?

- ★ This is a key phrase in determining whether an action needs Cth approval
- ★ “Significant” is not defined by the Act
- ★ Up to Courts to interpret - *Booth v Bosworth* case: “an impact that is important, notable or of consequence having regard to its context or intensity”



Hard to Fast Track the Cth Process

- ★ The Mary River Dam is being assessed under the familiar Cth EPBC Act process used for the proposed Nathan Dam, with the State seeking Cth approval of the action



Step 2- Referring the action to the Minister

- ★ Proponent (person taking the action) has a duty to refer if they think may have a significant impact on a MNES.
- ★ This has occurred as the action was referred to Cth Environment Minister on 15 November 2006



Minister determines whether action is “controlled action”

- ★ Once the action has been referred, the Minister has 20 business days to determine whether the EPBC Act applies – that is, whether the action is a “controlled action”
- ★ Public submissions apply if proponent says not a “controlled action”
- ★ Environment Minister declared the project a controlled action on 29 November 2006



Step 3- Assessing the impact of the action

- ★ Once an action is declared a controlled action it must be assessed before it can be approved (or refused, or approved with conditions)
- ★ The dam will be assessed under an Environmental Impact Statement under the bilateral agreement between Cth and State



The Minister can assess an action in one of these ways:

- ★ Accredited process under a bilateral
- ★ Assessment on preliminary documentation
- ★ A public environment report (PER)
- ★ An environmental impact statement (EIS)**
- ★ A public inquiry or Case-by-case accreditation



Step 4- Approval

- ★ The Minister must decide within 30 business days of receiving the results of the environmental assessment whether to grant an approval, refuse, or condition the action.



Summary of public participation opportunities

- ★ Comment on whether action should be controlled action,
- ★ If an action is declared a controlled action, there is opportunity for public submission for all assessment approaches – see Public Notices section of DEH website:

<http://www.deh.gov.au/epbc/publicnotices/index.html>



Other useful EPBC tidbits

- ★ s74: Minister can reject referral of part of a project and require the whole project to be referred.
- ★ s489: offence to provide false or misleading information in a referral



Enforcement – the public can take Court action to:

- ★ Get an injunction to stop actions being taken without EPBC Act approval
- ★ Get a declaration that a referral is false or misleading
- ★ Good public “legal standing” rights
- ★ Judicially review decisions of the Minister e.g. Nathan Dam– procedural grounds only, not merits review



Legal "To do" list for activists-1

- ★ Try a Freedom of Information request
- ★ Gather reliable information on the matters of NES that are likely to be impacted by the proposed Dam
- ★ Lobby the State government/Cth government to refer the matter for assessment under the EPBC Act (Referral occurred on 15 November 2006)



Legal "To do" list for activists-2

- ★ Watch the Cth website for sign of a referral and read it carefully
<http://www.deh.gov.au/epbc/publicnotices/index.html>
- ★ Lodge public comments and submissions as the assessment proceeds to show strength of public opinion



Legal To do list for activists-3

- ★ Consider challenging the process in the Federal Court if procedural flaws
- ★ Don't forget State legal issues too.
- ★ Law is a tool to aid a political victory-
*Opponents of the dam commissioned
an independent report on water
options for SEQ Qld*



Thank you

- ★ To the organisers and all the supporters here today
- ★ To the funders of the EDO, the Commonwealth and State Community Legal Services Program



EDO Qld. Website:

www.edo.org.au/edoqld

