One stop shop – What does it mean for the NT?

David Morris[1] and Laurene Hull[2]

ENVIRONMENTAL DEFENDERS OFFICE (NT) INC.

The Australian Government's one stop shop policy will accredit state and territory planning systems under the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) (the EPBC Act) to create a single approval process that satisfies both state / territory and Commonwealth requirements. The one stop shop policy "aims to simplify the approvals process for businesses, lead to swifter decisions and improve Australia's investment climate, while maintaining high environmental standards".

On 22 November 2013, the Chief Minister for the NT Government signed a Memorandum of Understanding (MoU) with the Australian Government to establish the agreed arrangements to deliver a one-stop shop for environmental approvals under the EPBC Act[3].

The NT MoU provides for the development of a comprehensive assessment bilateral agreement within 6 months, and an approvals bilateral agreement ("pursuing the broadest range of approvals") in principle by April 2014 and finalised by 18 September 2014. It seems unlikely that these deadlines will be achieved.

In the interim, the Commonwealth and Territory Governments have agreed[4]:

- to undertake a streamlining of assessment and approvals processes – with reporting to the public (although there is no mandated public consultation);
- that the Commonwealth will use the proposed conditions provided by the NT and, to the greatest extent possible, not impose additional conditions when making approval decisions under the EPBC Act;
- that conditions imposed on approvals must be "outcomes focused, strictly necessary to maintain environmental standards and based on risk-assessment"; and
- to consider embedding additional Commonwealth officers within the NT Government "to facilitate greater communication and information sharing".

Draft assessment bilateral agreement

The Commonwealth and the Northern Territory have had as assessment bilateral agreement since 31 May 2002. This should be adequate for the purpose of reducing timeframes and unnecessary administrative procedures for projects that require both Federal and Territory assessment. The agreement's purpose is "to minimise duplication of environmental impact assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation".

The assessment bilateral agreement's purpose is not just to streamline assessments – it is also to "protect the environment and promote the conservation and ecologically sustainable use of natural resources"[5]. This objective should not be forgotten in the race to streamline.

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[1] Principal Lawyer, EDO NT
[2] Lawyer, EDO NT
[3] Memorandum of Understanding between the Commonwealth of Australia and the Northern territory of Australia: http://www.environment.gov.au/system/files/pages/71679b88-a037-420d-966f-1f5b7047ea83/files/nt-mou-2013.pdf
[4] Memorandum of Understanding, cl 6.1.2

A draft bilateral assessment agreement was released for public comment in April 2014. Comments closed on 6 May 2014 (EDO NT made a submission), however no final agreement has been declared.

What is the problem?

The Environmental Defenders Office NT (EDONT) has identified the following problems with the one stop shop policy for the Northern Territory:

- Environmental standards
- Inadequate resources to effectively implement the one stop shop
- Conflict of interest when assessing projects supported by the Territory government

Meeting EPBC Act standards

The current NT legislation does not meet national standards that are at least commensurate with the EPBC Act protections. EDONT is particularly concerned about accrediting current NT processes for assessing impacts on matters of national environmental significance (MNES), such as nuclear actions, actions impacting on indigenous cultural heritage and World heritage properties such as Kakadu and Uluru-Kata Tjuta National Parks (not covered by the current assessment bilateral), management of Ramsar wetlands on the Coburg Peninsula and within Kakadu and actions impacting on water resources, including cumulative impacts, particularly in relation to coal seam gas.

Significantly, neither the objects of the *Environment Assessment Act (NT)* nor the *Environmental Assessment Administrative Procedures (NT)* currently refer to "ecologically sustainable development" (ESD). While these Acts require environment impacts to be considered, they fall far short of meeting the objectives of the EPBC Act. In particular, no obligation is placed on the Minister for Lands, Planning and Environment (the Minister who will have the power to approve developments with an impact on MNES) to act in accordance with principles of ESD.

A further concern is that opportunities for public participation in environmental assessment processes, and judicial review of decisions are significantly more limited under NT legislation than the EPBC Act. Given the high percentage of Indigenous Australians in the Northern Territory, it is critical that for special arrangements are in place to ensure affected groups with special communication needs have adequate opportunity to comment on proposed agreements, and that any assessment or approval bilateral provide for such groups to participate effectively in decisions affecting Aboriginal land.

Many of the NT's environmental laws and policies are currently under review, with changes to the EPA Act mooted for 2014. It is unlikely that such reviews will be finalised by 18 September 2014, when an approval bilateral agreement is intended to be in place. We consider it inappropriate to accredit laws which fail to meet the standards of the EPBC Act and which are in a state of flux and transition.

Arguably, bilateral agreements provide an opportunity to raise up the accredited Northern Territory processes to ensure that they comply with the EPBC Act assessment requirements, by listing more rigorous processes in the schedule to any agreement. However, the more effective, though time-consuming, mechanism to achieve this would be to withhold accreditation until Northern Territory legislation satisfies the standards set out in the EPBC Act. Such an approach would also improve the rigour and consistency of assessments undertaken for proposed developments that do not involve an impact on MNES.

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[5] Agreement between the Commonwealth of Australia and the Northern Territory under section 45 of the EPBC Act relating to Environmental Impact Assessment: http://www.environment.gov.au/system/files/pages/4aaf2c7e-3043-4b50-b0f9-9d7647ae51ca/files/nt-principal-agreement.pdf

Resources

The EDO NT has serious doubts around the capacity of the NT Government to adequately protect matters of national environmental significance and to enforce environmental laws. Aside from recruitment and retention difficulties, particularly with expert staff, the NT Government has indicated its unwillingness to enforce its laws in this and related areas on numerous occasions.

The EDO NT has noted with concern the findings of the Northern Territory Environmental Protection Authority's report into the Redbank Copper Mine (NTEPA Report) with respect to Environmental Impact Assessments. The NTEPA Report found that "[of] the projects that have proceeded to approval under the bilateral agreement, the Commonwealth has had to seek further information from the proponent after the NT assessment had been completed on 75% of occasions".

There is much work to be done to bring Northern Territory legislation up to national standard, and to implement the more comprehensive assessment framework that will be required. Unless adequate resources are provided to support monitoring, auditing, reporting, compliance and enforcement, the delegation of approval powers under the EPBC Act to the NT government puts MNES at risk, is inconsistent with our international obligations and creates a significant risk of the Commonwealth being exposed to legal liability.

Conflict of interest

The Commonwealth should retain the role of assessing actions where the NT government or an agent or authority of the NT Government is the proponent, a beneficiary or has a demonstrated political interest in an action. The NT government has no motivation to put the national interest before its own interest when approving developments within the Territory.

The government cannot be expected to properly consider matters of national environmental significance when its own financial and political interests are at stake.

It would seem to be good policy to ensure that the approval bilateral does not apply to projects where the Northern Territory government has a conflict of interest. An alternative would be to introduce merits review and open standing to provide great opportunity for public oversight of decision-making under Northern Territory legislation.

What do we need?

It is clear that significant law reform is required before the Commonwealth Minister could be reasonably satisfied that any approval bilateral for the Northern Territory will meet the objects of the EPBC Act. EDONT believes that the Commonwealth Government should retain approval powers, and ensure that any assessment bilateral for the NT:

- Accredits only Northern Territory environmental laws that meet the highest standards, including rights of public participation, greater transparency and consultation on standard Terms of Reference, offences for providing false information and broad standing provisions.
- Includes robust compliance, monitoring, enforcement, reporting and assurance mechanisms.
- Strengthens the engagement and involvement of Indigenous communities in the draft agreement and during the assessment process.
- Provides for public access to information.