

Key administration statistics – 3rd Party Appeals and the EPBC Act

Details from a forthcoming Australia Institute Report

- Since the EPBC Act commenced in July 2000, there have been approximately 5500 projects referred to the Minister under the environmental impact assessment provisions.
- Of the 5500 referred, around 1500 have been assessed as requiring formal assessment and approval.
- 12 projects have been refused approval.
- 9 projects have been deemed to be ‘clearly unacceptable’ (i.e. rejected prior to proceeding to formal assessment and approval).

Key 3rd party litigation statistics

- Since the legislation commenced, approximately 33 actions have been commenced in the Federal Court by third parties in relation to the EPBC Act’s environmental impact assessment process.
- These proceedings related to 27 projects or matters (i.e. in several instances, there were multiple court proceedings in relation to the same action – for example, the Bell Bay pulp mill and Port Phillip Bay dredging).
- Most relevantly, the proceedings taken by third parties only related to 22 projects that had been referred under the environmental impact assessment process (several related to non-referrals and one related to a policy document issued by the Minister). This means that 3rd party appeals to the Federal Court only affected 0.4% of all projects referred under the legislation.
- Of the 33 actions, four (4) were discontinued or resolved with the consent of the parties.
- Of the 33 actions, six (6) were ‘legally successful’, in the sense that the applicant received a judgment and/or orders in its favour. In one of these six, *Mees v Roads Corporation* [2003] FCA 306, the applicant was successful but the court decided on discretionary grounds not to issue any relief. In one other, *Mackay Conservation Group Inc v Commonwealth of Australia* [2015] (the Adani case), the applicant received consent orders in its favour.
- All other cases were legally unsuccessful.
- In only 2 of the 6 ‘legal successes’ did the 3rd party applicant achieve their apparent desired substantive environmental outcome (i.e. stopping or substantially modifying projects they believed would significantly harm the environment). The first was the *Booth v Bosworth* flying fox case (which stopped the operation of an overhead electrical grid that was killing flying foxes) and the second was the *Nathan Dam* case (*Queensland Conservation Council Inc v Minister for the Environment and Heritage*). However, the *Nathan Dam* was re-referred and is currently undergoing assessment for the second time and it may still go ahead.

Details of the cases are provided below. (the cases marked in yellow are the ‘legal successes’)

Cases that have proceeded to judgment

Schneiders v Queensland [2001] FCA 553

Jones v Queensland [2001] FCA 756

Booth v Bosworth [2001] FCA 1453

Humane Society International Inc v Minister for the Environment & Heritage [2003] FCA 64
Queensland Conservation Council Inc v Minister for the Environment and Heritage [2003] FCA
1463/Minister for the Environment and Heritage v Queensland Conservation Council Inc [2004]
FCAFC 190

Mees v Roads Corporation [2003] FCA 306

Mees v Kemp [2004] FCA 366/Mees v Kemp [2005] FCAFC 5

Paterson v Minister for the Environment and Heritage & Anor [2004] FMCA 924

Save the Ridge Inc v Commonwealth of Australia [2005] FCA 17/Save the Ridge Inc v Commonwealth
[2005] FCAFC 203

Brown v Forestry Tasmania (No 4) [2006] FCA 1729/Forestry Tasmania v Brown [2007] FCAFC 186

Wildlife Preservation Society of Queensland Proserpine/Whitsunday Branch Inc v Minister for the
Environment & Heritage & Ors [2006] FCA 736

The Investors for the Future of Tasmania Inc. v Minister for the Environment and Water Resources
[2007] FCA 1179

The Wilderness Society Inc. v The Hon. Malcolm Turnbull, Minister for the Environment and Water
Resources [2007] FCA 1178/Wilderness Society Inc v Hon Malcolm Turnbull, Minister for the
Environment and Water Resources [2007] FCAFC 175

Anvil Hill Project Watch Association Inc v Minister for the Environment and Water Resources [2007]
FCA 1480/Anvil Hill Project Watch Association Inc v Minister for the Environment and Water
Resources [2008] FCAFC 3

Blue Wedges Inc v Minister for the Environment, Heritage & the Arts [2008] FCA 8

Blue Wedges Inc v Minister for the Environment, Heritage and the Arts [2008] FCA 399

Your Water Your Say Inc v Minister for the Environment, Heritage and the Arts [2008] FCA 670

Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts [2009] FCA

330/Lawyers for Forests Inc. v Minister for the Environment Heritage and the Arts [2009] FCAFC 114

Lansen v Minister for Environment and Heritage [2008] FCA 903/Lansen v Minister for Environment
and Heritage [2008] FCAFC 189

Milne v Rally Australia Pty Limited [2009] FCA 1101

Wide Bay Conservation Council Inc v Burnett Water Pty Ltd (No 8) [2011] FCA 175

Krajniw v Brisbane City Council (No 2) [2011] FCA 563

Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts [2011] FCA
113/Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts [2011]
FCAFC 59

Henderson v Corporation of the City of Adelaide (No 2) [2012] FCA 9

Buzzacott v Minister for Sustainability, Environment, Water, Population and Communities (No 2)
[2012] FCA 403/Buzzacott v Minister for Sustainability, Environment, Water, Population and
Communities [2013] FCAFC 111

Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1418

Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1419

Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water,
Population and Communities [2013] FCA 694

Tarkine National Coalition Incorporated v Minister for the Environment [2014] FCA 468 (15 May
2014)/ Tarkine National Coalition v Minister for the Environment [2015] FCAFC 89

Discontinued or resolved with consent of parties

Tasmanian Conservation Trust v Minister for Environment and Heritage [2004] FCA 883

Alan Oshlack v Minister for Environment Protection, Heritage and the Arts and Quasar Resources Pty
Ltd (NSD 1271/2009)

Tasmanian Conservation Trust Inc v The Minister for Sustainability, Environment, Water, Population
and Communities (Federal Court Proceeding ACD 24/2011)

Mackay Conservation Group Inc v Commonwealth of Australia [2015]