Pro Bono Centre – for Environmental Defenders Office

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Environmental Impact Statement (EIS) Processes (Qld): Critical Analyses

About the authors

This project was researched and written by University of Queensland (UQ) law students Madeleine Pitman, Thomas Moore and Karen Zhu for and on behalf of the Environmental Defenders Office, a non-profit, non-government Community Legal Centre.

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Environmental Impact Statement (EIS) Processes (Qld): Critical Analyses

Pro Bono Centre – for Environmental Defenders Office

Madeleine Pitman, Thomas Moore and Karen Zhu

Semester 1 - 2019

Review and Analysis of EIS Processes (QLD)

Project Overview and Issues

This project broadly examines issues and problems related to the Environmental Impact Statement (EIS) process prior to the completion of an Environmental Authority (EA) application in Queensland. This project is associated with the broader research of Transparency International by examining EIS processes in Qld as a specific aspect of mining approvals which may be vulnerable to corruption as a result of a lack of transparency and verification.

Included Research Sections/Topics

1. Review and analysis of literature related to the public interest in ensuring independent verification of Environmental Impact Statements. Indicates key primary and secondary materials that could inform a potential submission.
2. Evaluation of the Coordinator-General's role and powers, as well as a discussion of key issues raised in the case of *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)*. Also includes a proposal for the centralisation of jurisdiction as a reform to the EIS processes.
3. Discussion of some of New South Wales' 'Environmental Impact Assessment Improvement Project' reforms to improve accountability in the EIA process. These reforms could be applied in Queensland.

Revised Research Scope

Upon second meeting with Kate, research scope has been narrowed to focusing on the role of the Coordinator-General in Queensland, the consequences associated with this role for transparency and accountability in the EIS process, and comparison of equivalent roles/figures in other state jurisdictions. A core goal from the analysis of other state jurisdictions (and potentially international jurisdictions) is to derive an understanding of current best practice in the EIS (or equivalent) process. Due to scope and time constraints, in further emails with Kate the project was refined further to focus on three specific dimensions surrounding the improvement of accountability and transparency in the EIS process.

Contents

Section I: Aspects of Independent Verification of Environmental Impact Assessments and Statements

The first section of this project provides a review of the main literature, reports and commentary on the need and public interest associated with the independent verification of Environmental Impact Statements as part of the mining approvals process in Queensland.

Public interest in the verification of Environmental Impact Assessments

Many countries have taken actions and implemented policies in the past two decades to protect environmental resources and public health from 'environmental pollution and to restore and enhance the quality of their natural environments' (United States Environmental Protection Authority 2002). However, there is overwhelming consensus within the broad academic literature and commentary that independent verification is a critical aspect for ensuring the credibility of an Environmental Impact Assessment, which in Queensland (as part of mining project approvals) includes the submission of an Environmental Impact Statement (EIS) and associated assessments. The fundamental purpose of an EIA is to ensure that governmental actions – including decisions to grant mining leases and licenses – avoid or minimise unanticipated and adverse effects. In effect, EIAs 'institutionalise foresight' and provide a process whereby cautious and informed decisions can be made with regard to projects with consequences such as environmental degradation, biodiversity loss and negative interferences with certain cultures and communities (United States Environmental Protection Authority 2002).

Independence broadly is fundamental to present ethical discussions (Everett et al. 2005), and is 'viewed as a cornerstone of the ethical foundations of verification fields such as chartered and pubic accounting arbitration and auditing' (Wessels 2013, citing Everett et al. 2005). Furthermore, the International Association of Impact Assessment (IAIA) identifies independent verification as an important component of the basic principle of a 'credible EIA' and states that 'a credible EIA process should be carried out with professionalism, rigor, fairness, objectivity, impartiality and balance, and be subject to independent checks and verification' (IAIA 1999: 3). Wessels further emphasises that independent checks and verification also form 'an integral part of environmental impact assessment (EIA) follow-up and the related activities of monitoring, auditing, evaluation, management and communication (Wessels 2013: 169, citing Arts 1998: 26; Lee and George 2000: 6; Wood 2003: 7).

Generally, the literature surrounding independent verification of EIAs or EISs focuses either on regional or country-specific perspectives, or the recommendations or reforms made by legal bodies, community organisations and other representations in other Australian jurisdictions. This project specifically identifies the proposed reforms and suggestions made in relation to the EIA process in New South Wales as having key insights for similar progress and recommendations in Queensland. Overall, however, there are limited secondary resources/contributions on verification of EISs in the Queensland context, and an even smaller number of sources that examine the need to verify or follow-up EISs or EIAs in the processes prior to the grant or refusal of a mining lease.

This element to the project will provide an overview of the relevant literature on independent verification in relation to environmental impact assessments, statements and other reports, while also pointing to key issues raised in relation to the need for independence, accountability and public trust. This overview will provide an introduction to the TIA Report on corruption risks in mining approvals in Australia as a basis for the further research conducted in this project, and subsequently considers aspects/issues associated with independent verification raised in the reviewed literature.

Prevalent Risks and Concerns in Mining Approvals in Australia

Notably, Transparency International Australia (TIA) has investigated the risks and concerns prevalent in mining approvals in two Australian states – Western Australia (WA) and Queensland (Qld). It is largely on the basis of evidence presented in this report regarding the risks for corruption in the grant of mining leases and environmental approvals in Queensland that the current project explores some of the available literature and research for improving independent verification and transparency.

Specifically, TIA investigated the process for granting mining leases and licenses before the mining project itself can commence. In Western Australia, the review focussed on exploration licences, mining leases, State

Agreement Acts and Native Title mining agreements. In Queensland, the focus was on mining leases and environmental approvals for large mines and infrastructure projects under State and Commonwealth law. The high corruption risks that were of particular concern to TIA in both jurisdictions included:

- Inadequate due diligence into the character and integrity of an applicant, and its principal(s), for mining leases.
- Industry influence on both the policy and the political agenda of government in the development of major resource projects.
- Lack of transparency in agreements between mining companies and native title holders.
- For Western Australia only, the lack of transparency in the negotiation of State Agreement.

In addition, the following were identified as medium risks specific to the Queensland jurisdictions only:

- Risk of external interference in the Coordinator-General's recommendations, evaluations and imposition of conditions.
- Limited independent review of modelling systems underpinning an environmental impact statement (**EIS**).

Coordinated Projects: Role of the Coordinator-General

Of particular concern in the TIA Report in relation to vulnerabilities and risks in Queensland mining leases is the role and responsibilities of the Coordinator-General. TIA identifies several vulnerabilities in the coordinated projects assessment process, particularly in relation to inadequate due diligence; the discretion of the Coordinator-General to make evaluations and recommendations; and limited independent review of modelling systems used in the environmental impact statement.
The following sections of this report, and in particular Section II further explores the concerns raised by TIA surrounding the powers and discretion of the Coordinator-General and the need for standardised modelling systems in making environmental, economic and social impact assessments. Special attention will be placed on the discretion of the Coordinator-General to make declarations, evaluations, and recommendations and impose conditions.

Benefits and Industry Advantages Associated with Independent Verification

Aside from ensuring an accurate and independent assessment of the environmental, economic and social consequences of a proposed project, a number of authors also emphasise the overall industry benefits associated with the independent follow-up and verification of EIAs. Marshall (2005: 191-192) discusses how EIA assessment has a valuable role in good developmental practice, and can 'also encourage integration of environmental perspectives into developmental programmes, the systematic implementation of mitigation and the triggering of environmental risk responses posed through construction activities'. The overall outcome of the TIA investigation was that while there are elements of transparency and accountability in WA and Qld mining approval processes, there are nonetheless significant risks that 'can lead to adverse impacts and enable corruption' (TIA 2017: 8).

Public Interest in the Independent Verification of Environmental Impact Assessments

The TIA Report (2017: 32) highlights how public action and commentary on the problems and associated impacts of the mining approval process has often been characterised as 'the purview of the left green fringe'. However, the TIA (2017: 32) clarifies this generalisation by pointing to the growing voice and objections of landholders and rural communities in the Queensland Land Court as indicative of broader public concern. Moreover, the Report emphasises that the concerns of groups opposing coal mines related to climate

change, future Australian energy requirements, ecological and water resource protection, protection of biodiversity, and the financial probity of companies operating in Australia are all effectively pertinent issues of national interest and concern (TIA 2017: 32).

The research undertaken in the TIA Report further reveals that the level of public interest in the approvals process for large mining projects, an active civil society, a robust media, and a competitive and entrepreneurial mining industry are 'powerful agents that work to expose and deter corruption' and increase the accountability of the WA and Qld approvals processes.

It is evident that despite the rapid growth in the EIA process since the twentieth century, increasing legal requirements and public expectation for increased environmental protection, there are still significant problems associated with verifying and substantiating submitted assessments (Fraser, Thompson and Moro 2003: 188). Beder (1993), in a broad analysis of bias and credibility concerns in the submission of EIAs, underscores that growing public concern for the lack of objectivity in EISs, as well as the limited transparency of associated assumptions and value judgments. Beder (1993) determines that one of the most fundamental public concerns associated with EIS processes is the conflict between the significant investments and financial resources committed by the proponents of a mining/development project (involved in the production and submission of the EIS) and the need to provide an objective scientific, economic and social analysis of the potential consequences of the project in question. The author stresses that it is 'inevitable that the values and goals of those preparing an EIS will shape its contents and conclusions through the way scientific data is collected, analysed, interpreted and presented' (Beder 1993). While other commentators argue that the EIA/EIS process contains checks 'against bias and distortion because the EIS is subject to public scrutiny when it is displayed and when it is assessed by the government authority', Beder (1993) highlights that this does not counteract issues such as the selective inclusion and interpretation of relevant data, choice of modelling and the material/personal interests of those involved in the preparation of the EIS (including hired consultants who are dependent on client work and satisfaction).

Public Participation in Environmental Impact Assessments

The problems discussed above in relation to public interest and concern in the independence and transparency of EIAs leads to an equally pertinent issue: What is the 'adequate level' and form of public participation in EIA processes? This question is framed by Glucker et al (2013: 104-105) as concerning 'who and why' should be involved in the verification and follow-up of EIAs, and how this participation is to be facilitated. While it is explicitly evident from the available literature on EIAs that public participation is considered to be an integral part of assessment procedures, there is limited reflection or consensus on the 'precise meaning, objectives and adequate representation of public participation in EIAs' (Glucker et al 2013: 104). The importance of public participation has been discussed in scientific literature (see, eg, Doelle and Sinclair 2006; Hartley and Wood 2005; Palerm 2000; Shepherd and Bowler 1997), with an emphasis on its role in producing an effective EIA and how public involvement could be facilitated/improved (Hartley and Wood 2005; Stewart and Sinclair 2007). O'Faircheallaigh (2010: 19) also discusses the need to enhance public participation in EIA processes, and also highlights how the underlying rationale for greater public participation is 'sometimes poorly articulated'. Glucker et al (2013: 105) discuss how an ongoing problem is that there is no agreement on the precise meaning of public participation in the context of EIAs, and that is not clear 'what public participation in EIA involves and requires'. The authors also highlight that there is no consensus as to who should be allowed to participate in EIA and the specific objectives of this form of participation (Glucker et al 2013: 105). The submission by Glucker et al (2013) provides a detailed consideration of these issues, and raises some relevant considerations as to the role of public interest and involvement in EIS verification in Queensland.

Another significant problem that has been raised in Australian Government reports and commentary is the lack of scope for detailed public comment and examination of proposals for certain mining projects, particularly by Aboriginal and Torres Strait Islander communities. Thus, a critical point of concern for future research is that even if formal requirements for public comment and participation in the EIA/EIS process have been generally met, it must be further questioned whether there is scope for ATSI communities to comment, or even generally understand, the potential impact and consequences of projects and to be involved in the assessment process. Some submissions have even challenged that depending on the size and potential impacts of a project, there may be cases where the associated EIS (and EIAs) must provide 'enhanced opportunities for public input' (Parliament of Australia 2019).

Other Issues Associated with Independent Verification

A frequent issue raised in environmental and ecological journals is the inadequate or inappropriate ecological input into the development of EIAs – this critical concern is further cited as the main reason as to why EIAs can be unsuccessful in predicting and evaluating the ecological impacts of proposed projects or 'disturbances' (Fraser, Thompson and Moro 2003: 188, citing Beanards & Duinker 1984; Buckley 1993; Treweek 1999; Wood et al 2000), along with a 'lack of sufficient data; poor survey methodology; temporal and spatial constraints; economic constraints and inadequate data evaluation leading to unreliable impact prediction' (Fraser, Thompson and Moro 2003: 188, citing Underwood 1993; Warwick 1993; Wilson 1998).
In an article discussing the adequacy of fauna surveys in the preparation of Environmental Impact Assessments in the mining industry of Western Australia, Fraser, Thompson and Moro (2003: 187) discuss the claims of the Western Australian Environmental Protection Authority (WAEPA) as to the problems associated with conducting sufficient survey efforts to 'describe faunal populations prior to, or changes as a consequence of developments (i.e. mining) in WA' (Environmental Protection Authority 2002). The authors further highlight how defining and quantifying the importance of ecosystem processes is 'complex, difficult, and lacking in scientific certainty' (Ehrenfeld 2000; Nilsson and Grelsson 1995; Tilman 1999). This research, as an example, demonstrates the importance and increasing pressure for measures to improve the accuracy and adequacy of the surveys, reporting and modelling required to produce EIAs.
While independent verification is a fundamental element to ensuring the credibility of EIAs, Wessels (2013) emphasises that various factors are involved in the verification process, including the need to ensure the independence of verifier agents (such as checkers, auditors, and Environmental Control Officers). In the context of developing states, Wessels (2013: 169) identifies five categories of factors derived from a detailed analysis of available literature and data: financial; commercial; professional; personal; and other. Wessels (2013: 169-170) emphasises that in considering interest and implementation of EIA verification, it is important to identify what factors might influence the independence of verifiers from a developing country perspective, with a view to better anticipate and avoid conflict of interest. While these insights are not directly applicable with regard to the fact that Australia is not a 'developing state', it is clearly apparent that in any recommendations for improvement or standards of best practice in EIA verification it is necessary to consider the role and accountability of the verifiers (or verification bodies) themselves. The factors underscored by Wessels (2013: 169) could also be translated to the Queensland context with regard to role of the Coordinator-General, and the implications of the powers of such an office with regard to project approvals. A relationship can also be identified between requirement and standards of independent verification and subsequent processes of EIA monitoring and auditing. Ahammed (2007: 2) underscores that independent monitoring and auditing of EIAs must be integrated into the early stages of the EIA process, rather than only implemented throughout the ongoing environmental management of an operation.
Finally, one of the most critical issues frequently raised by academics, professionals and other commentators in the Queensland context is that there are no overarching guidelines or standards that can be used to assess or verify the quality of EISs for structure, content or accuracy. This fundamental limitation has led to reforms and additional policies in other state jurisdictions. For example, independent verification of EISs in the ACT is implemented through an 'EIS Inquiry Panel', which is established when the relevant ACT Minister determines that an EIS needs to be considered in further detail. Despite this mechanism, it remains that it is the decision of the Minister to decide to establish the panel, and select the panel and presiding member (ACT Government 2019). In the absence of any legislative requirements or guidelines in Queensland, this project highlights in subsequent sections how some of unification or standardisation is absolutely essential. Finally, this report will address in further detail the reforms and guidelines that have been implemented in NSW in order to implement additional standards for the EIA/EIS modelling and submission.

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Section II: The Coordinator-General

Background

Barry Broe is Queensland's current Coordinator-General, holding the position since 2012, when he was personally appointed by former Premier Campbell Newmann. Mr Broe's professional background is in infrastructure, major projects and transport across all aspects of planning, design, funding, procurement, construction, operations and maintenance. With 30 years of diverse public sector experience, he has successfully planned, coordinated and delivered infrastructure and major projects both in Queensland and overseas.

He holds a Bachelor of Civil Engineering degree (first class honours) from the University College Dublin, Ireland and a Master of Engineering and Technology Management degree (METM) from the University of Queensland.

His work history includes the role of divisional manager of Brisbane Infrastructure in the Brisbane City Council, during which time a $6 billion infrastructure program was delivered. As the Director of Transport Planning and Policy for London, he was responsible for the delivery of major infrastructure projects and also led the transport planning for the successful Olympic Bid. His work in the Queensland Government included working for the Department of Transport and Main Roads in a wide range of planning, design and construction roles.[1]

His time as Coordinator-General has not been without controversy, however. Mr Broe has received criticism for fast-tracking developments and environmental assessments.[2] This perhaps reflects his background in infrastructure, rather than planning and development.

Powers of the Coordinator-General

Analysis of the Role

The role of the Coordinator-General ('C-G') is primarily concerned with facilitating infrastructure and development. While they are responsible for impact assessments for projects, this is primarily in ensuring that developments comply with regulations. As such, they have a positive duty towards facilitating development. Accordingly, potential environmental impacts are an obstruction, not a priority. This can be demonstrated in the background of the current C-G, Mr Broe. Mr Broe has an extensive history in dealing with regulations and mining, including an engineering degree. He has no qualifications whatsoever in environmental management, assessment or science. Environmental regulation may be classified as a thorn in the side of project development.

It is therefore a conflict that the C-G exercises great power over conditions on Environmental Impact Schemes (EIS) and goes against the fundamental principles of the *Environmental Protection Act* to promote a positive duty to the protection of the environment. The current statutory regime does not adequately distinguish the differences between environmental protection and practical matters of infrastructure and development planning. Law reform should look to distinguish the environment from the nature of other impact assessments undertaken by the C-G, and the C-G should be bound by conditions placed on an EIS by an environmental authority, not the other way around.

Statutory Framework of the Coordinator-General's Powers in Respect of EIS'.

The following section provides a snapshot of some of the statutory regulations regarding the C-G and their role in the EIS process, which provide context to, and highlight, the problems with the current framework.

State Development and Public Works Organisation Act

This Act is often referred to as the 'Coordinator-General's Act'. It is significant because it allows for the appointment of a C-G as a corporation sole, representing the Crown. It clearly outlines the extent of the C-G's powers with respect to planning and development. Division 3, Subdivision 1 addresses the EIS assessment process. While this Subdivision does require for the C-G to do such things as accept public

[1] All of the above information comes from https://www.statedevelopment.qld.gov.au/our-department/executive-leaders.html
[2] https://www.theaustralian.com.au/nation/politics/top-campbell-newman-official-got-early-job-extension/news-story/7b05804aca539952b19bda3ccee8de42

submissions during the submission period for a draft EIS.[3] However, the C-G may accept the EIS with relatively little restriction, apart from giving consideration to all relevant submissions and materials.[4] While the C-G does have to prepare a report for the EIS, the statute does not give any burdens that the C-G must prove met, merely that consideration was given to things such as potential environmental impacts.[5] Additionally, the C-G essentially has the final say on the conditions imposed on the EIS, with any conditions they decide on overruling any other conditions from other approvals.[6] They can impose almost any condition they see fit. Importantly, this binds an administrative authority who may choose to impose selective environmental conditions and limits the scope of the conditions of an administrative authority.[7] Furthermore, the C-G also has the power to consider any environment impacts that may be relevant, and impose conditions accordingly. Again, this directly removes agency from authorities acting under the *Environmental Protection Act*. Furthermore, the C-G, or anyone acting on their behalf, does not need to act under an environmental authority.

The risks here are abundantly clear. The C-G has relatively unrestrained control of the process, is relatively unshackled by liberal statutory requirements to consider environmental impacts, and there is little room to question a decision provided the C-G has 'considered' all relevant matters.. Litigation has proven that the lax requirements on decision-makers leave little scope for questioning a decision-makers findings, even where on the facts there are real and clear risks to biodiversity and environmental stability are.[8]

The solution does not lie with statutory interpretation. Rather, it is a dual-fold problem with the statutory framework for EIS formulation, and the expansive role of the C-G, who is generally not experienced enough in matters of environmental concern to make them the best qualified to be assessing environmental impacts. The primary purpose of the C-G is to facilitate development by providing a framework for public works and environmental coordination. The purpose of the *EPA* is to strike a balance between protecting the environment while allowing for beneficial development. Given the unique nature of environmental issues, while the C-G and associated development authorities should be involved in all aspects of the development and application process, the issue of understanding environmental impacts, specifically with reference to how damage to the environment can be mitigated should be deferred to a more experienced and qualified agency, such as the Department for Environment. While this is not perfect, after all a Department can be strongly influenced by the policy direction of the government of the day, it will provide better accountability and trust in the decision-making process than the current system.

A Note on Inconsistent Conditions

The inconsistent provisions override in favour of the C-G have been the subject of much uncertainty and dispute in litigation. The issue was first considered in detail in the case of *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth-Brisbane Co-Op Ltd & Ors* where the Court said "the Court has power under the EPA to recommend conditions for the draft EA dealing with the same subject matter as conditions imposed by the Coordinator-General, provided that the Court's recommended conditions do not contradict or lack harmony with the Coordinator-General's condition". Once again, this does highlight the constraints placed on even the Court to provide findings on the conditions imposed by the C-G.

Regarding the interpretation of the override principle, the leading authority is *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)*, where Member Smith stated:

> "I am minded to accept a very narrow definition of what is inconsistent because this will allow for a proper conditioning of projects after hearing all the relevant evidence, rather than not recommending conditions the Court believes are relevant or refusing the EA altogether because a relevant condition cannot be recommended due to inconsistency with a CG condition". This demonstrates a willingness on the behalf of the Court to actively avoid stopping the go-ahead of projects on the basis of not being able to impose conditions consistent with the C-G's conditions. While this is a compromise to both uphold the principles of the *EPA* while respecting the findings of a government agency, it is clearly an uneasy one. Member Smith goes on to say "I have concerns with the legislative prohibition on the court recommending conditions inconsistent with CG conditions. My concerns are based on the following two points:

[3] s 34
[4] S 34A
[5] S 34D
[6] S 54B, E
[7] S 190, 205
[8] See e.g. *Australian Conservation Foundation Inc. v Minister for the Environment (No 2)*

a) In this matter the CG issued his evaluation report on 19 December 2014 endorsing the project and stating conditions to be included in a draft EA. On 28 August 2015, Mr Loveday on behalf of EHP issued the draft EA and retained all the CG stated conditions.

   Since the CG evaluation report and subsequently the draft EA was issued, relevant legislation and policies have changed. The Water Act legislation has changed and also the 2016 NEPM has issued with changed air quality standards. Given the time between when the CG may condition a project and when the Land Court may hear and determine any objections relevant to that project; relevant laws, policies and guidelines may change. This then creates a difficult situation where the new law/policy etc. may require a change to the outdated CG conditions but the Court can not recommend a change if it is inconsistent.

b) CG evaluation of the EIS an AEIS was no doubt thorough but it was not as thorough as the evaluation of those documents in the court proceedings before me. Nor did the CG have the assistance of expert opinion tested by cross-examination. Consequently what I find to be errors in expert reports and modelling in many vital areas such as water, noise and dust were only ascertained as part of the Land Court proceedings and not discovered by the CG in his evaluation process.

   The inconsistency requirement has an unwelcome hindering effect on the court in circumstances where the CG has relied upon incorrect modelling and the court is unable to correct conditions made by the CG in reliance on that incorrect modelling.[9]

This statement by Member Smith highlights the problems noted above in the legislation. The C-G has the ultimate say in conditions to address environmental concerns, despite not having the expertise or access to information in the same way that a Court or specialised committee/agency might have. While this does promote efficiency in decision-making, it sacrifices thorough investigation, and compromises the quality of the final report.

Concerns in the Process arising in *New Acland*

The aforementioned case of *New Acland* provides a perfect encapsulation of further problems with the EIS process. Confusion over conflicting evidence greatly increases time spent in Court for all parties. The following are extracts regarding certain aspects of modelling and assessments required for economic modelling. While not going substantively into ways in which this process could be improved, one bold suggestion is to centralise the jurisdiction in which environmental concerns are heard for mining – i.e. issues relating to environmental concerns should be heard in the Planning and Environment Court, not the Land Court.

Issue 1 – Witnesses

Member Smith notes at [204]-[206] in *New Acland* about the sheer complication of having so many witnesses involved in the process. Worth noting is that because the parties involved would rely on experts with contradicting models and opinions, cross-examination could go on for days upon days. Moreover, Member Smith expressed concerns regarding the quality of lay witnesses who supported New Acland Coal (NAC), as many had received, or stood to receive, benefits from the mine. This led to flaws in the process of examinations. Consider the following example regarding a lay witness who supported the mine:

> "One surprising aspect of Mrs Janetzki's evidence was that she stated she could not recall how it was that she came to make her affidavit in support of the mine. She was not the only person to have a failed memory in this aspect. She was clearly nervous and hesitant when answering the question.

[9] [190]

> In my view, Mrs Janetzki has a very good memory of how she came to prepare her affidavit but was unwilling, for reasons known only to her, to share that information with the Court."

Likewise, experts in support of NAC were also observed to engage in such things as seeking coaching from the gallery. All of this brings into severe question the quality of the testimony of witnesses as they are inflicted with bias. Alongside the sheer volume of information and affidavits provided to the Court, this greatly hampers the examination process.

Issue 2 – Dust and Air Quality

A concern with the current requirements for dust and air quality is that real-time monitoring is not required, despite evidence provided to the Court that this is an increasingly normalised process in the industry. Member Smith stated that providing this data in real-time would be a good way to remove distrust between the community and mining companies. For mining companies, it provides accurate data to show to communities to demonstrate that they are complying with their legal requirements. This is something that should look to be made a compulsory part of monitoring requirements.

In general, a lot of the concerns and disputes came from issues that NAC could have monitored but chose not to (a discretion allowed under the current monitoring framework). Reducing the amount of discretion a mining company has in what they are required to monitor, and the stringency of such requirements will go some way to removing distrust between the parties involved. The following quote is a good example of this;

> [621] In light of the uncertainty with respect to the actual ratio of PM2.5 to PM10 existing at the mine and at nearby residences; the potential serious health consequences of exposure to PM2.5; the changing level of knowledge and concern with respect to safe levels of exposure to particulate matter particularly PM2.5; and the insignificant costs of monitoring PM2.5 when compared to the overall costs of the revised Stage 3 expansion project; I believe that NAC should provide a PM2.5 monitor at Acland as suggested by Dr Taylor. I make this recommendation also noting that NAC have made submissions that they are a good corporate citizen who cares about the welfare of their community. The fact that PM2.5 monitoring is not normally undertaken in mining activities carries little weight in this decision, as unlike most mines, this mine is surrounded by many nearby residents, and science-based concerns regarding PM2.5 are continuing to evolve. Just because something was acceptable in the past does not mean that the present should not adopt current best practice to reduce risk.

Issue 3 – Economic Modelling

Current modelling requirements do not need to demonstrate that a mine would have a net benefit, but some sort of economic benefit does need to be demonstrated. Currently, there are many conflicting models used to demonstrate the economic benefit of mines, with the inclusion of different types of data and estimations dramatically influencing the perceived overall benefit of the mine. The I/O model is acknowledged to be deeply flawed. To quote the observations of Member Smith:

> Both experts agree that the I/O modelling significantly overestimated the economic benefits of revised Stage 3 and the jobs to be created. In fact most skilled jobs are drawn from other workplaces not unemployment lines. The I/O model assumes that all jobs created are additional to those already employed, as if skilled workers all came off a pool of unemployed workers – an assumption similar to the Great Depression. This unrealistic assumption results in I/O modelling overstating jobs and real income effects

Likewise, the CBA model is also flawed, as it depends greatly on where the primary focus of the benefits is placed. NAC focussed on a local level, but the positive impacts of the mine would have been greatly reduced if focus was instead broadened to look more generally at Queensland. Additionally, much of the modelling places too much stock on predicting future coal prices. This is extremely difficult to do, especially with expert analysis suggesting demand for coal is likely to soften over the coming years.[10]

Issue 4: Groundwater

Of all the issues before the Land Court, this was by far the most controversial in *New Acland*. After exhaustive examination, NAC was found to have kept very flawed data on faults in geographic monitoring, which severely compromised groundwater impact estimation. NAC failed to keep accurate aquifer data, had demonstratable inconsistencies in fault-mapping, and did not update conceptualisations for the stage 3 mine

[10] https://www.australianmining.com.au/news/coal-forecast-to-drop-off-in-2019-as-demand-softens/

application. The modeller responsible for the EIS modelling had inexplicably left different sets of data out of later models – in short, it was very poor modelling practice on the part of NAC. This greatly impacted subsequent agreements between NAC and local residents – make-good agreements between the parties regarding impacts to groundwater were flawed, as the residents had to rely on the flawed modelling provided by NAC to determine whether an agreement should be reached. This problem appears to have occurred due to lax internal processes within NAC, and a framework that does not stringently spell out stricter requirements for accurate and up-to-date modelling on the part of mining companies.
Member Smith summarised the problems as follows.

> [1630] Taking the totality of the evidence into account, I am at a loss to see how a landholder could prove any loss of groundwater at one of their bores was caused directly and with certainty by NAC's revised Stage 3 mining operations, such is the high degree of uncertainty of the groundwater evidence. It would be an unacceptable situation, in my view, for NAC to simply to be able to say that it was not satisfied that a landholder lost drawdown in a bore due to NAC's mining operations, and then leave it to the landholder to undertake what would be very expensive litigation to establish otherwise.
>
> I am not satisfied by what is in effect proposed by the draft EA and the additional conditions proposed for the draft EA that a significant amount of further reporting and research should be undertaken post approval and, in some circumstances, before mining commences, and in other circumstances, after mining commences. The risks to the very valuable underground water resources in the Acland area are simply too great for that approach to be reasonably taken.
>
> [1680] To be as blunt as possible, I find the state of the groundwater evidence before me, save for the 2016 IESC Advice and indeed, the 2015 and 2014 IESC Advices, as a muddle. There are simply too many unresolved questions; too many issues upon which the experts agree that the current model in inadequate, and too little of substance in promises and assurances for the future without the ability to give reasoned views on specific data at this time of the approval process, for me to be satisfied that groundwater issues have been properly addressed. Hence, I recommend that NAC's revised Stage 3 project not be approved due to groundwater concerns.
>
> In short, should NAC wish to have the revised Stage 3 approved, it should take a corporate deep breath, and have the expert scientific modelling and other scientific data that it is now promising to prepare properly undertaken and prepared and resubmitted.

Summary of the Issues

A recurring theme from these issues is that NAC did not keep sufficiently extensive or contemporary and up-to-date data. Part of this perhaps stems from reliance on their own experts, which may be instructed to model in a way that is not neutral. Additionally, too much discretion appears to have been granted to NAC in what type of data they were required to keep. Stricter and more onerous requirements should be in place. This would prevent compromises in data and modelling and reduce the complexity of disputes in Court.

A Note For Reform- Jurisdiction

Generally, centralisation of jurisdiction should be favoured. Environmental disputes involving mines must be heard in the Land Court, not the Planning and Environment Court which is specifically adapted for these circumstances. After *New Acland*, it was held on appeal that the reason for the Stage 3 application being rejected for NAC, being groundwater concerns, was found to be out of the jurisdiction of the Land Court, despite Member Smith's extensive reasoning and findings.
Centralisation reduces the amount of litigation that is required and saves costs for all parties - specialisation as well, so better governance can occur. Courts such as the PEC in Queensland have access to experts on hand, which the Land Court does not. Giving greater jurisdiction for the PEC to hear matters such as this

would be a much better system, and would give better results in the long-term. For more information on how reform in the Courts may occur, the following article is extremely useful:
http://www.lec.justice.nsw.gov.au/Documents/characteristics%20of%20successful%20ects%20-july%202013.pdf

Section III: Reforms in New South Wales

In New South Wales, an EIA Improvement Project was created to improve environmental outcomes and streamline the EIA processes there (The Department of Planning and Environment NSW, 2016: 2). This project was aimed to promote better stakeholder engagement, improve the efficacy of decision making, build confidence in the EIA's integrity, provide clarity for proponents and stakeholders and improve the quality and consistency of EIS documents (The Department of Planning and Environment NSW, 2016: 2).
The NSW Department of Planning and Environment ('The Department') first came up with initiatives to improve the EIA processes and invited public submissions on the initiatives. Then, based on the initiatives and public submissions, the NSW government developed a set of clear guidelines for proponents and the community around the EIA process.
This discussion will focus on initiatives to have earlier and better engagement, improve the quality and consistency of EIA documents and improve EIA professional accountability, as well as some public submissions on these initiatives. This discussion will then focus on the draft guidelines for peer review and community stakeholder engagement.

Initiatives

Earlier and better engagement

The Department has identified that it is necessary to involve the community earlier and to improve the quality of engagement between EIA participants (The Department of Planning and Environment NSW, 2016: 4). EDO NSW submitted their support for public engagement during the earliest stages of the EIA process to help identify key issues.
Thus, the Department suggested there should be a pre-lodgement meeting held to discuss the required community engagement that should occur during the scoping phase (The Department of Planning and Environment NSW, 2016: 4).
In addition, during scoping, the Department has identified that there could be proponent-led engagements based on engagement objectives which inform a strategy (The Department of Planning and Environment NSW, 2016: 4). However, EDO NSW was concerned that a proponent-led engagement may not lead to an appropriate consideration of community issues (EDO NSW, 2016: 6). Therefore, safeguards should be in place, so the public can feel as though their views are respected and so they can trust the process (EDO NSW, 2016: 6).
Furthermore, the Department suggested proponents and decision makers may also be required to inform community members how their views have been considered. If community members' views have not been considered, proponents should justify why they have not considered these views. The Department also suggested there could be the option for department-led engagement on key issues and identification of options to make EIA documentation publicly available at all stages of the process (The Department of Planning and Environment NSW, 2016: 4).
In response to this initiative, EDO NSW submitted that there could be further guidelines on early engagement. They submitted that there should be guidelines explaining what leading-practice consultation is, the benefits and incentives that arise from leading-practice consultation and the benefits and incentives of being responsive to the community's uncertainties and concerns (EDO NSW, 2016: 6).
EDO NSW also identified that the Department and its partner agencies should examine systemic factors which hinder public trust, such as legal rights which may favour developers and reduce incentives to respond to legitimate community concerns (EDO NSW, 2016: 6).
In addition, EDO NSW highlighted the tension between 'streamlining' assessment processes to make them more efficient (e.g. by bypassing standards) and genuine engagement which takes more time. Streamlining government approval processes may be perceived by members of the public as reducing the government's ability to hold the mining industry accountable against its environmental impact commitments and conditions. This can erode the public's confidence in legislative and regulatory power, which may reduce the acceptance of mining more broadly and make it more difficult for a mine to operate efficient under conditions of increased social conflict (EDO NSW, 2016: 6).

Improve the Consistency and quality of EIA documents

In the discussion paper, the Department identified that EIA documents are getting more complex and larger but do not necessarily improve the public's understanding of the project nor their decision making. Thus, the Department suggested that there could be a requirement for a consolidated project description in a chapter of the EIS that can be linked to the conditions on which the approval is provided, with any subsequent modifications included in this chapter (The Department of Planning and Environment NSW, 2016: 4).
In addition, the Department suggested that writing clear summaries of the EIS can help promote public understanding (The Department of Planning and Environment NSW, 2016: 4). In relation to this suggestion, EDO NSW submitted that there need to be safeguards (e.g. peer review) to ensure summaries are objective, unbiased and do not sound like a sales pamphlet (EDO NSW, 2016: 7). Peer review should be open and transparent, rather than focused on specific issues. EDO NSW also submitted that the Department should clarify that the summaries do not waive the need for technical assessments (EDO NSW, 2016: 7).
Also, the Department suggested that EIA documents' purpose and intended audience should be better defined (The Department of Planning and Environment NSW, 2016: 4). This suggestion was supported by EDO NSW and the Environment Institute of Australia and New Zealand (EIANZ) (EDO NSW, 2016: 7; EIANZ, 2016: 2). EDO NSW also further suggested that the department should also clarify who will rely on the documents and their legal status (EDO NSW, 2016: 7).
Furthermore, the Department suggested there should be greater guidance about form, content and quality of documentation (The Department of Planning and Environment NSW, 2016: 4). The EIANZ identified there is tension between providing flexibility in the EIA documentation to best address key issues in the proposal, and certainty that all matters relevant to the project will be appropriately addressed in the EIA documentation. Hence, the EIANZ submitted that there should be guidance about the minimum acceptable standard for the EIA documentation and associated implications. However, the guidance should not be too rigid; guidelines should be sufficiently flexible to allow documentation to challenge best practice and explore innovative delivery mechanisms available from new technology (EIANZ, 2016: 2).
EDO NSW also suggested that communities should be supported to obtain independent advice and proponents should genuinely respond to concerns raised by the community (EDO NSW, 2016: 7).

Improve the Accountability of EIA Professionals

The Department also came up with the initiative: to improve the accountability of EIA professionals. By improving the accountability of EIA professionals, there can be greater public trust in the EIA process. The Department suggested that possible ways to do this included creating a code of conduct and mandatory training for EIS leaders and developing an extended peer-review system (The Department of Planning and Environment NSW, 2016: 5).
In response to this initiative, EDO NSW submitted their support for use of a code of conduct, mandatory training and extended peer review system (EDO NSW, 2016: 8).
EDO NSW also submitted that all consultants should be professionally accredited using industry-recognised certification to improve public trust (EDO NSW, 2016: 9). For example, consultants can be accredited as a Certified Environmental Practitioner, specialising in Impact Assessment (CEnvP-IA) under the EIANZ.
The CEnvP-IA is suitable for both government-based practitioners and industry-based practitioners. The CEnvP-IA requires practitioners to:

- hold an environment-related degree; and
- have 10 years of full-time equivalent experience in environmental practice within the last 15 years (with a minimum of those five years being impact-assessment specific, with at least three of those years supported by documentary evidence); and
- be nominated by three respected environmental professionals; and
- be a respected, competent, ethical and active member of the profession; and
- have ongoing commitment to training and professional improvement (with 100 points of training, professional improvement, service to professional practice over a two-year period, with 50% being directly related to EIA practice).

(EIANZ, 2016: 4)

Suitably qualified EIA professionals will allow more accountability because there is greater transparency around the quality of documents. This increases the stakeholders' ability to make informed decisions around the projects and to trust the EIA process (EIANZ, 2016: 4).
The EIANZ also made submissions to the Department, which encouraged the Department to invest in continuous professional development or training for EIA assessment staff. The EIANZ submitted that by having technically competent and up-to-date environmental assessment officers, the Department can better ensure that assessed EIA documents are a higher quality, which also further improves the public confidence in the EIA process (EIANZ, 2016: 4).
Furthermore, EDO NSW submitted that consultants should be independently allocated to major projects, so they are not pressured by the proponent and so to reduce the appearance of bias. This will allow the decision-makers to access more objective EIA information for more informed decision-making (EDO NSW, 2016: 9).

Draft Guidelines

Community and Stakeholder Engagement

Based on these initiatives, the Department created a guideline which explains to proponents how they should engage with stakeholders during the EIA process. The Department identified that Stakeholders should have a say in decisions which affect their lives, and that participation leads to better planning outcomes (The Department of Planning and Environment NSW, 2017a: 1).
Hence, the Department created the guideline, so it would expand on engagement requirements which are already set out in legislation (e.g. For Queensland, this may be found under the *State Development and Public Works Organisation Act* 1971 (SDPWO Act) or *Environmental Protection Act* 1994 (EP Act)) (The Department of Planning and Environment NSW, 2017a: 1).
Under this draft guideline, The Department has stipulated the activities which proponents are required to engage in. They have also outlined some activities they will engage in themselves in relation to community and stakeholder engagement. The community and stakeholder engagement activities outlined in this guideline can be broken down into six categories. These categories are:

- Participation during Scoping;
- Participation during the Preparation of the EIS;
- Participation during EIS exhibition and responding to submissions;
- Participation during assessment and determination;
- Participation during post-approval; and
- Participation during modifications

(The Department of Planning and Environment NSW, 2017a).

Participation During Scoping

Firstly, stakeholders are required to engage with stakeholders and community members during the scoping stage. A summary of the activities which need to be undertaken at this stage include:

- Project preparation: This includes identifying relevant stakeholders, obtaining a preliminary understanding of the community and other project stakeholders which may be impacted by the project. The proponent should identify which stakeholders are most impacted by assigning an engagement level (which is an evaluation scale used to determine who is most impacted by a project) (The Department of Planning and Environment NSW, 2017a: 9-10);
- Conducting a scoping meeting with the Department (The Department of Planning and Environment NSW, 2017a: 10-11);
- Determining which stakeholders will be consulted: During the meeting, a draft list of those known to be impacted, those potentially impacted and those known to have an interest or history of interaction

with this or similar projects should be compiled. In addition, vulnerable groups should be paid attention to (e.g. ATSI, young people, old people, disabled people, people who are from culturally/linguistically diverse backgrounds) (The Department of Planning and Environment NSW, 2017a: 11);

- Meet the minimum requirements for information to be provided, feedback to be obtained on defined issues and reporting on how proponents have met these engagement requirements (The Department of Planning and Environment NSW, 2017a: 12);
- Confirm the approach to engagement: The proponent should use the engagement level from Project Preparation and use the participation outcomes outlined in this Guideline (see section 3.4.1) to determine the engagement techniques the proponents should use with community and stakeholders. The Department has not specified any specific engagement techniques which proponents must engage in to maintain flexibility (The Department of Planning and Environment NSW, 2017a: 12-14);
- Create a scoping report: The requirements for this report are outlined in Section 3.5 of The Community and Stakeholder Engagement Guideline and the Scoping and Environmental Impact Statement Guideline (The Department of Planning and Environment NSW, 2017a: 15-16).

Participation During Preparation of the EIS

The Department has also stipulated the activities which proponents should engage in with community and stakeholders during the EIS preparation phase. A summary of activities to be engaged in as part of participation during the preparation of the EIS include:

- Prepare the EIS in response to the Secretary Environmental Assessment Requirements (similar to "TORs" in Queensland) which relate to engagement of community members and stakeholders. There may be more requirements for engagement where the proponent has identified that there should be a medium or high approach to engagement (The Department of Planning and Environment NSW, 2017a: 17).
- Community and Stakeholder Engagement Plan (CSEP): The CSEP describes the detailed approach by the proponent to achieving the Scoping Report outcomes and report on how stakeholders have participated throughout the EIA process. Proponents are also required to prepare a Community and Stakeholder Engagement Plan (CSEP) following the issue of the Secretary's Environmental Assessment Requirements to set out how the participation outcomes will be achieved. Proponents must also make key elements of the CSEP public (The Department of Planning and Environment NSW, 2017a: 17-18).
- Report on community and other stakeholder participation: The EIS and supporting materials should outline when and how community members and other stakeholders have participated throughout the project. The Department have outlined minimum requirements on what should be reported on community and stakeholder requirements in the EIS (see section 4.3 of the Community and Stakeholder Engagement Guideline) (The Department of Planning and Environment NSW, 2017a: 18).
- Evaluate community and other stakeholder participation: The proponent should evaluate how successfully the proponent was able to meet the participation outcomes, with reference to measures,

evidence of success and implementation of engagement techniques. This evaluation should be reported in the EIS (The Department of Planning and Environment NSW, 2017a: 18-19).

Participation during EIS exhibition and responding to submissions

The Department have identified responsibilities of both the proponent and the Department themselves during the exhibition and submission-response phase of the EIA process, as well as after the exhibition phase. The Department have identified their own responsibilities, which include:

- Exhibiting the EIS;
- Inviting public submissions on the EIS;
- Administer the receipt of submissions;
- Making the submissions available to the proponent.

(The Department of Planning and Environment NSW, 2017a: 20)

As for the proponent, they should continue to engage with the community and other stakeholders by:

- Explaining the EIS and specialist studies to the community, to help them make informed submissions about the EIS;
- Prepare a submissions report if required by the Department at the end of the exhibition phase. See Section 5 of the Guideline for requirements on the report;
- Consider providing further opportunities for the community and other stakeholders to participate in developing solutions to raised issues from submissions after exhibition;
- Communicate changes made in agreement with the community and other stakeholders after exhibition;
- Meet with the Department if required, because of the results of the submissions, nature of concerns after exhibition; and
- Include additional engagement activities undertaken as part of the proponent's response to submissions.

(The Department of Planning and Environment NSW, 2017a: 20-21)

Participation during assessment and determination

The proponent's main responsibility while the project is being assessed or approved is to inform all stakeholders of the Department's final determination of the assessment and let stakeholders and community members know of the location of the consent documents and any next steps (The Department of Planning and Environment NSW, 2017a: 22).
This section also outlines the process which is undertaken during the assessment of the project (which occurs after the Submissions Report is submitted). This process can be found in Section 6 of the Community and Stakeholder Engagement Guideline (The Department of Planning and Environment NSW, 2017a: 22).

Participation during post-approval

The Department has stipulated that the proponents should continue to maintain their relationships with community and stakeholders throughout construction, operation and decommissioning (but have not stipulated the exact activities required to maintain relationships with the community and stakeholders). The Department also stipulates that the CSEP should be updated to denote the engagement activities through construction and operation (The Department of Planning and Environment NSW, 2017a: 23).

Participation during modification

The Department has outlined three different possible types of modification to the project which can be made. These different types of modifications are classified based on the scale, complexity and likely level of environmental impact. This Guideline is only concerned with Type 3 modifications, which are modifications with a moderate to complex environmental impact. For a Type 3 Modification, proponents must undergo similar processes to starting a new project (e.g. going through a new scoping process, meeting with the Department again, document outcomes from engagement) (The Department of Planning and Environment NSW, 2017a: 24).
More information on modifications can be found in Section 8 of the Community and Stakeholder Engagement Guideline as well as the Modifying an Approved Project Guideline.

Contrast to Queensland's Community and Stakeholder Engagement Requirements

In Queensland, a Social Impact Assessment (SIA) Guideline addresses the Community and Stakeholder Engagement, but in far less detail than in the NSW Community and Stakeholder Engagement Guideline (The Department of State Development, Manufacturing, Infrastructure and Planning QLD, 2018: 6-7, 11-12). The SIA Guideline was created by the Coordinator-General and is a statutory instrument for resource projects. This Guideline was created in accordance with s 9(4) of the *Strong and Sustainable Resource Communities Act* 2017 (SSRC Act). Essentially, the Community and Stakeholder Engagement Requirements list out the details which are required to be in a SIA and discusses the relevant elements in relation to community and stakeholder engagement (e.g. the project itself, EIS, SIA, Post-EIS processes) (The Department of State Development, Manufacturing, Infrastructure and Planning QLD, 2018: 11-12). In addition, it also addresses some of the objectives of community and stakeholder engagement (The Department of State Development, Manufacturing, Infrastructure and Planning QLD, 2018: 6-7). However, unlike the NSW Community and Stakeholder Guideline, it does not have detailed activities which the proponent is required to engage in.

Peer Review

After receiving submissions about the initiatives, the Department came up with Draft Guideline 9, which outlined the Department of Planning and Environment's expectations on Peer Review. The aim of the peer review is to allow for greater public confidence in the integrity of the EIA and have more confidence in relying on content in the EIA. This guideline increases the accountability of both peer reviewers and proponents. This guideline considers both the review process as well as suitability of consultants engaging in peer review (The Department of Planning and Environment NSW, 2017b: 1).
Peer review is an independent process undertaken by a consultant engaged by the proponent, the Department, Planning Assessment Commission or other government agency. The independent peer review is discretionary (The Department of Planning and Environment NSW, 2017b: 2). A project proponent may engage in a peer review and before they submit their assessment as part of their application to confirm their findings and finalise assessment as part of their EIS. They may also be required to do a peer review by the Department. The Department, Commission of Planning and other government agencies can engage a consultant in assessing the application or post approval stage for state-significant resource projects (The Department of Planning and Environment NSW, 2017b: 2). It is important to note that independent peer review is separate to the functions of government agencies in reviewing and providing comments on applications for State significant projects throughout the EIA (The Department of Planning and Environment NSW, 2017b: 2).
The Peer Review guideline stipulates criteria for peer review.

Suitability of Reviewers

Firstly, the peer reviewers must be suitable. For a peer review to be suitable, they must have significant expertise in the matter being reviewed (The Department of Planning and Environment NSW, 2017b: 3). Hence, the reviewer should be recognised by their industry as a senior practitioner, by reference to established criteria by national professional organisations around suitable consultants (e.g. the CEnvP-IA under the EIANZ). Proponents should thus use these organisations to determine who to engage. Secondly, peer reviews should be independent from the proponent. This means the peer review should not have previously contributed to the project, nor have been consulted during the project's development. The consultant should act objectively, disclose interests as appropriate and be free from conflicts of interest

which arise from their engagement with the project or proponent (The Department of Planning and Environment NSW, 2017b: 3).

Professional integrity requirements

Secondly, the peer review should meet professional integrity requirements. The Guideline stipulates a list of activities the peer reviewer should undertake. The peer reviewer should:

- Discuss with the principal consultant on the specific environmental matter.
- Review information relating to specific environmental matter and the draft environmental assessment report.
- Review comments relating specific environmental matter made by government agencies and other key stakeholders.
- Review documentation relating to the principal consultant's judgments and conclusions.
- Evaluate conclusions reached by the principal consultant and determine whether the draft environmental assessment report is appropriate or not.
- Prepare a draft report to discuss with the proponent and principal consultant on findings and recommendations of the review. The review should lead to proponents acting on the findings and recommendations made by the reviewer, which should be demonstrated in the final environmental assessment report or update report.

(The Department of Planning and Environment NSW, 2017ba: 3-4)

Reporting Requirements

Thirdly, the peer review needs to meet Review Reporting requirements, by fulfilling the Department's requirements around the structure and content of the report. The peer review needs to instil confidence in the Department, the Commission for Planning, other various government agencies, the proponents, proponents' investors and public members affected by the assessed impact (The Department of Planning and Environment NSW, 2017b: 4).

Conclusion

In summary, The NSW Department of Planning and Environment have written up a set of initiatives and draft guidelines to reform the EIA processes over there. This discussion was particularly concerned with accountability issues within the EIA process. Thus, the initiatives which this discussion focused on were:

- Earlier and Better Engagement;
- Improving the Quality and Consistency of EIA document; and
- Improving the accountability of EIA professionals.

Public submissions from EDO NSW and EIANZ were reviewed in respect to these proposed initiatives. Additionally, there were two draft guidelines which were developed based on the initiatives. These two guidelines were:

- Community and Stakeholder Engagement; and
- Peer Review.

Although Department of State Development, Manufacturing, Infrastructure and Planning QLD has developed a SIA Guideline, it is not as detailed as the guidelines or initiatives produced by the Department. Therefore, these guidelines produced in New South Wales could serve as inspiration for reform of the EIA processes in Queensland.

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THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

CREATE CHANGE

Contact details

Pro Bono Centre
T +61 7 **3365 8824**
E probono@law.uq.edu.au
W law.uq.edu.au

CRICOS Provider Number 00025B