



Environment Institute  
of Australia and  
New Zealand Inc.

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Policy and Reform Branch  
Department of the Environment  
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Canberra ACT 2601  
Email: [EPBCActPolicy@environment.gov.au](mailto:EPBCActPolicy@environment.gov.au)

Dear Policy and Reform Branch

This submission is on behalf of the Environment Institute of Australia and New Zealand Inc (EIANZ) Special Interest Section on Impact Assessment.

The EIANZ is the leading professional body for environmental practitioners in Australia and New Zealand, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

The EIANZ Special Interest Section on Impact Assessment seeks to achieve good environmental outcomes by:

- Promoting ethical and competent practice of impact assessment by environmental practitioners through developing tools, competencies and a certification process
- Developing and promoting, within the wider community, practices to support and extend impact assessment through institutional and decision-making frameworks, processes, standards, competencies and tools.

The EIANZ supports the draft Outcomes-based Conditions Policy and the use of outcomes-based conditions, where appropriate. Outcomes-based approaches are widely recognised as best practice in regulation (e.g. Productivity Commission 2013, CoAG 2007), and outcomes-based conditions are being utilised by a number of jurisdictions in Australia (e.g. EPA 2015). Section 1.1 of the draft policy provides a list of benefits from adopting an outcomes-based approach. In addition, the EIANZ notes that prescriptive conditions effectively place the responsibility and risk with regulators, to specify the management strategies required to meet an outcome. Outcomes-based conditions place this responsibility and risk with the proponent. The latter approach is more appropriate as:

- It requires proponents to take responsibility for their environmental impacts
- Proponents will generally have a better understanding of the management strategies that could be used to meet an outcome.

The EIANZ also accepts that outcomes –based conditions are not appropriate in all circumstances. As noted in section 3.1, a prescriptive approach may be preferable where a proponent has limited capacity and expertise. In addition, prescribing a management strategy may be appropriate if it is clearly superior to other alternative strategies.

The EIANZ agrees with the statement that each of the characteristics that make a project suitable for outcomes-based conditions is insufficient on its own to establish the suitability of a project. Indeed, it is questionable whether a project that fails to meet a number of these characteristics should be approved until further work is undertaken to reduce the level of uncertainty. As noted in section 1.1, 'Outcomes-based conditions do not mean that actions with unacceptable impacts will be approved'. This statement should be broadened to also include projects with unacceptable levels of risk.

While the characteristics in section 3.1 may make a project less suitable for outcomes-based conditions, the question also needs to be considered as to whether other approaches would be more effective, for a particular project, in providing greater confidence that matters of national environmental significance will be protected. These characteristics would also provide a challenge in developing prescriptive or systems-based conditions (noting that reliance on a management plan still requires subsequent assessment of the strategies in that plan as to whether they are adequate to achieve the intended outcome). Depending on the level of risk to the protected matter, outcomes-based conditions may still be the preferable approach with a strong adaptive management framework to address uncertainties. As noted in the draft policy, the potential for hybrid conditions should also be considered.

A strong assurance framework is critical for the successful use of outcomes-based conditions. The monitoring effort required to demonstrate achievement of outcomes should reflect the risk that an outcome may not be achieved. Unless this risk is low, the proponent should be required to demonstrate, prior to project approval, that practicable and effective adaptive management measures are available if further action is required to ensure an outcome is being met. In such cases, it will be necessary for there to be clearly articulated threshold criteria that will provide an early warning that an outcome may not be being achieved, so that appropriate and timely adaptive management action can be taken by the proponent to ensure that activities remain in compliance.

An outcome may not be achieved if actual impacts are greater than expected. This needs to be considered through an appropriate risk assessment. Risks can derive from uncertainty:

- in understanding of the source, pathway or receptor for the impact
- from the use of modelling in impact assessment including the extent to which the model used has been validated
- in the likely effectiveness of design and management measures proposed to manage impacts.

Risk management is a critical component of an outcomes based approach. The role of adaptive management is discussed in the guidance note but should be highlighted further in the policy.

It should be noted that an outcomes based approach requires an ongoing compliance responsibility for the proponent to assure the regulator:

- the monitoring and reporting program is adequate to provide confidence the outcome is being met, taking into account the level of risk

- the performance indicators (and therefore the outcomes) are being met.

Public reporting of monitoring results and compliance with performance measures and outcomes is essential in ensuring non-compliances are identified and brought to the attention of the regulator.

The guidance note is also supported, but it could be improved by the use of examples across a range of matters of national environmental significance – it is currently very species/communities focused. On a minor note, milestones (as discussed in section 3.2) may not always be needed. For example, an outcome directed to preventing environmental pollution would need to be met from commencement of the project and on an ongoing basis.

Finally, the EIANZ notes that an outcomes based approach relies on proponents providing scientifically and technically accurate documentation, and ensuring that impact predictions made are well-founded and evidence based. The Institute considers that procedural oversight and the standard of work that contributes to the administration of the EPBC Act, can be substantially improved by requiring professional oversight and certification of documentation by 'suitably qualified and experienced' persons.

The term 'suitably qualified and experienced' is deliberately used, because it implies multiple criteria for providing quality assurance of documentation, and does not presume that certification can only be provided by a person from a particular discipline or profession.

The EIANZ suggests that one of the key ways of recognising a person as being suitably qualified is through their professional grade membership of an organisation that holds its members accountable to a code of ethics and professional conduct. The EIANZ believes that such an approach will provide a higher level of assurance to project proponents, decision-makers, regulators, and the community, that appropriate and competent standards of ethical good practice environmental management are being used under the EPBC Act.

The EIANZ believes the EIANZ Certified Environmental Practitioner Scheme provides an effective basis for professional environmental practitioners to be recognised as 'suitably qualified'.

#### References

Council of Australian Governments (2007) Best Practice Regulation: A guide for ministerial councils and national standard setting bodies (October 2007)

Environmental Protection Authority, WA (2015) Environmental Assessment Guideline for Recommending environmental conditions Revised, EAG11

Productivity Commission. (2013) Major Project Development Assessment Processes, Research Report. Retrieved from <http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf>



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