

5 December 2013

Regulatory Reform Taskforce
Department of the Environment
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Environment
Institute of
Australia and
New Zealand
SOUTH EAST QLD DIVISION

Dear Sir / Madam

RE: SUBMISSION ON DRAFT QUEENSLAND ASSESSMENT BILATERAL AGREEMENT 2013

The Environment Institute of Australia and New Zealand (EIANZ) welcomes the opportunity to make a submission on the Draft Queensland Assessment Bilateral Agreement. The attached response has been prepared by the EIANZ SEQ Division whose members have been extensively involved in both the preparation and assessment of environmental assessments for some of Australia's largest and most complicated development projects.

The EIANZ supports the streamlining of environmental assessment and approval processes, particularly where that will lead to a stronger focus on high quality environmental impact assessment and transparency of processes. It also provides an opportunity to better integrate the interests of the Commonwealth and Queensland governments in environmental impact assessment, the lack of which has for too long created duplication of effort and process. The EIANZ considers that the environmental impact assessment process, not only requires the input of specialist scientists but the time has come for consideration to be given to requiring a suitably qualified and experienced person to take professional responsibility for the completeness and quality of the overall EIS documentation.

The EIANZ has taken the opportunity in this submission to comment on the new Clause 4 and the associated MOU between Australia and Queensland regarding the introduction of an approvals bilateral agreement. The EIANZ supports the development of an approvals bilateral agreement that will create opportunities to examine standards and processes for the avoidance, mitigation and rehabilitation of impacts identified through high quality environmental impact assessment, and provide a strong framework for identification of acceptable and unacceptable impacts associated with projects. The EIANZ is concerned that the opportunity not be missed, in accordance with international best practice, in developing the assessment bilateral to separate clearly the assessment and approval processes. The EIANZ also notes that there are a number of legal and procedural issues to be worked through to develop an approvals bilateral agreement that achieves the outcomes sought, that is, an efficient and streamlined process that also achieves high levels of environmental protection. The EIANZ would be pleased to offer advice on the development of the specific requirements of an approvals bilateral agreement.

The Environment Institute of Australia and New Zealand (EIANZ) is the professional organisation that supports, guides and represents environmental practitioners. It encourages the development and implementation of good practice environmental management through policies, standards and continuing professional development. Members of the EIANZ operate in accordance with the EIANZ *Code of Ethics and Professional Conduct* and can be found guiding the implementation of good practice environmental management throughout Australia and New Zealand. Among its members are Australia's and New Zealand's leading environmental impact assessment practitioners from government, industry and the consulting sector.

The EIANZ would be pleased to discuss its comments further, and also to participate in development of an approvals bilateral agreement. Please contact Mr Scott Hanna, Chair of Policy and Practice for the South East Queensland Division in this regard at seq@eianz.org or 07 5429 8480.

Yours sincerely



Vicki Low
President
South East Queensland Division

Attachment: EIANZ SEQ Division Submission

EIANZ SEQ Division

Comments on:

“Draft Queensland Assessment Bilateral Agreement”

**Prepared under the *Environment
Protection and Biodiversity
Conservation Act 1999* by the
Australian Government Department
of the Environment**

December 2013

Introduction

The Environmental Institute of Australia and New Zealand (EIANZ) supports measures aimed at making the environmental assessment process for Matters of National Environmental Significance (MNES) more effective and efficient. With the proposal for the addition of an 'approvals' bilateral¹, there is an opportunity to make more fundamental changes to the existing assessment bilateral to more clearly separate the assessment and approval processes, in accordance with international best-practice. Such changes, in the view of the EIANZ, would better achieve the aims of the assessment bilateral in maintaining high standards for the protection of the environment.

The comments and suggestions provided below focus primarily on the broad requirements of a good assessment process. Where appropriate, reference is made to specific clauses in the 'Draft Queensland Assessment Bilateral Agreement' to emphasise a given issue.

A key principle that the EIANZ recommends is that the processes and scientific information used to assess environmental impacts of development projects and inform decisions, are sound, and that consideration is given both to an effective, and an efficient assessment process.

An effective environmental assessment process

The cornerstone of good environmental decision making is a transparent and comprehensive assessment of environmental implications of a proposed development project. This is traditionally achieved through an environmental assessment process.

Prerequisites for an effective environmental assessment process include:

- The assessment provides the necessary information for the decision-maker to make an informed decision
- The community is confident that the assessment clearly identifies impacts of the proposal and the degree to which any impacts can be modified.

Assessment consists of the technical studies to identify and examine potential significant adverse impacts and possible strategies to prevent or reduce the adverse impacts as an input to the decision-making process. Thus the assessment process should be clearly distinguished from the decision-making process. Accordingly, the draft assessment bilateral should be amended to remove reference to proposed conditions (e.g. see clauses 18.2, 21 and others). These appear to EIANZ to be misplaced as they seem to infer that a decision has already been made.

Therefore, we recommend that these and other similar clauses be reworded to avoid the inference that a decision has already been made, or where necessary, moved to the proposed approvals bilateral. Such a distinction will improve public confidence in the integrity of the assessment process.

¹ Given 'approval' is only one of the two possible outcomes, the proposed 'approvals bilateral' should be re-named to 'decision-making bilateral', or similar

Additionally, a rigorous environmental assessment should be:

- Based on good science
- As quantitative as possible, identifying possible thresholds of impacts
- Contain proposed mitigation strategies that are proven – i.e., tried and true or, where tried and true mitigation is not available, adaptive management methods should be followed.
- A multi-stage assessment process which quickly identifies deal-breakers. The process should include an explicit role for strategic assessments. The current agreement is not clear on the role played by the proposed regional assessments in project specific environmental impact assessments. Strategic assessments should identify values and relative priorities, as well as identify potential future compatible land use, thus allowing for the identification of ‘deal-breakers’ and providing a focus for project level assessments.

Public confidence in the assessment process would be strengthened by the role of a technically competent (independent) third party to arbitrate processes and scientific information to determine impact assessments are sound. For example, in Canada, independent environmental assessment agencies have been established. At the federal level the Canadian Environmental Assessment Agency provides an independent coordinating role for comprehensive impact assessments required when federal triggers have been initiated. Likewise, counterpart provincial agencies, such as the Province of British Columbia’s, ‘Environmental Assessment Office’, have been established to oversee environmental assessments, and ensure that they are based on good science, appropriate stakeholder consultation, meet legislative requirements, and undergo follow up compliance audits. Recent changes to the Canadian Environmental Assessment Act (2012) have streamlined the environmental assessment process by providing the provinces with the power to coordinate environmental assessments that meet both federal and provincial requirements (i.e., a single environmental assessment document). Whilst the provinces are able to run the process, the federal government retains its decision making authority on matters of federal importance.

The EIANZ sees an opportunity for government to capture the issues above, and formally set some national standards in relation to the quality of environmental impact assessments. To assist government in achieving this goal, we have attached EIANZ’s document of 25 good practice statements in support of quality impact assessments.

An efficient environmental assessment process

The EIANZ agrees that to achieve maximum efficiency, the process should be streamlined and unnecessary duplication in existing processes removed. Although this would be facilitated by the proposed ‘one-stop shop’, because of the involvement of multiple agencies, there needs to be a clear articulation of roles and responsibilities and governance arrangements. Advice on the best governance model is outside our primary expertise. However, it is important that responsibilities are clear to all, and agencies have the demonstrated capacity to meet their responsibilities. This is particularly relevant given the

extensive reduction of resources available for environmental assessment in both Queensland and the Commonwealth jurisdictions.

An efficient assessment process is also facilitated by targeted Terms of Reference (ToR), specific to a particular project. Thus although a generic ToR could be provided for guidance, since every project is different the ToR should be tailored to the high priority issues that are location/ project specific. This approach could assist in reducing the size of many impact assessments, thus facilitating timely and comprehensive review by stakeholders. Clarity in the ToR should also improve efficiency by reducing the need for re-work of project planning and design, or supplementary assessments by the proponent.

The Queensland Minister for Environment and Heritage Protection has recently written to the EIANZ agreeing with the view that *“the identification of potentially significant impacts would best be considered at the initial stages of the application, as this would have the benefit for the project proponent of providing a solid basis for scoping the terms of reference”*. The Minister has advised that the Queensland government is moving to prepare *“a guideline on the identification and evaluation of ‘critical matters’ (potentially significant impacts)”*. The EIANZ is of the view that in order to ensure efficiency of process such guidance material needs to be developed in the context of the proposed bilateral arrangements and issued on a bilateral basis.

The EIANZ is further of the view that good governance and public confidence are both strengthened if the decision-maker is independent of the proponent.

Other matters

EIANZ also notes that delays associated with government assessment processes are only part of the reason that the environmental assessment process can be very lengthy. It is our view that delays also commonly occur due to:

- *Poor integration of the environmental impact assessment process into the overall project delivery process.* EIANZ has identified this as a key issue in our review of environmental assessment processes, and sees significant opportunities to reform the process through providing better guidance to proponents on how to integrate the environmental assessment process with project delivery processes.
- *The poor quality of many environmental impact statement (EIS) documents.* EIANZ has observed many examples of EIS documents that:
 - have significant information gaps;
 - do not present information clearly, concisely and coherently; and
 - fail to clearly state the actual impacts of the project.

This leads to additional information requests and delays in the “supplementary EIS” stage. EIANZ’s 25 statements on good practice for preparing environmental and social impact assessments (ESIA) was specifically developed to assist environmental assessment practitioners in preparing good quality scientifically well founded EIS documents.

- *Strict reliance on legislation.* A better approach is to consider environmental management issues throughout the process and not approach such issues purely from the point of view of meeting statutory requirements.

Because of the significant risks involved in moving quickly to the devolution of both assessment and 'approval' on MNES to the Queensland Government, the EIANZ see merit in the (draft) Productivity Commission review recommendation, that a staged approach to implementation be undertaken, with initial emphasis on devolution of less environmentally sensitive proposals.

Monitoring and assessment

Reference is made in the draft assessment bilateral to monitoring of conditions (see Clause 22). As indicated earlier, such clauses are better placed in the proposed approvals bilateral. However, given their importance, a few comments are made below.

To achieve the appropriate outcome it is critical that there is a robust and effective compliance program. Moreover, the monitoring should be of sufficient intensity (both spatially and temporally) to unambiguously assess compliance. In the past, there has been a tendency post project approval to remove conditions rather than enforce compliance.

In preparing an impact assessment, a large number of assumptions are made about impacts or the lack of impacts, and the effectiveness of various mitigation measures. To ensure that the required environmental outcomes are actually achieved, EIANZ recommends that follow up assessment to verify the assumptions of the impact assessment be undertaken and the ability to adapt or modify the project accordingly should be incorporated into the post-approval process. This information should also be readily available to inform future assessments.



Environmental and Social Impact Assessment

Good Practice Statements

Environmental and Social Impact Assessment (ESIA) is a tool to inform decision making in development proposals, and can be defined as:

The process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made. (IAIA 1999)

To be of maximum benefit to all stakeholders, ESIA needs to be conducted well. The following statements set out the characteristics of good practice ESIA.

To achieve its purpose, good practice ESIA:

1. Is based on a thorough understanding of the environmental and social values and resources in the receiving environment. Baseline studies are of sufficient geographic and temporal coverage to provide for an understanding of seasonal and regional variations in environmental values. Description of the existing environment includes documentation of the interrelationships between different elements of the physical, biological and social environment.
2. Produces succinct and well-structured documentation that provides the information required for stakeholders to understand the environmental outcomes of the action, and for regulators and decision makers to make informed decisions regarding the action.
3. Clearly states data and information sources, methodologies, assumptions, uncertainties and judgements used in identifying baseline environmental and social values and in predicting environmental outcomes.
4. Includes mechanisms for incorporating new or unforeseen issues that may arise during the course of the investigations.
5. Is undertaken in a framework of sustainability, considering effects of the action on the ability of the physical, biological and social environment to support human life both now and in the future.
6. Is integrated into project development and delivery such that the outcomes of studies undertaken for the ESIA can influence design and maximise opportunities to avoid and minimise impacts and enhance positive outcomes. This includes assessment of alternatives such that the action is optimised from an environmental, social, technological and financial point of view.

To assist with orderly development, good practice ESIA:

7. Occurs in the context of a broader strategic planning and policy framework that, among other things, provides guidance in relation to orderly planning and development, thresholds for project level and cumulative impacts and core values and resources that are to be protected.
8. Clearly states the extent to which an action and the associated environmental outcomes are consistent with legislation, policies, guidelines and plans and provides justification where the action is inconsistent or non-compliant with legislation, policies, guidelines and plans.

To rigorously evaluate impacts, good practice ESIA:

9. Focuses effort on the potentially significant impacts of an action with the depth and scope of the assessment proportionate to the values that are potentially impacted and the scale and significance of potential impacts.
10. Presents impacts and overall environmental outcomes in a logical and objective manner, with quantification of impacts wherever possible and, where impacts are presented qualitatively, sufficient context to support evaluation of the significance of impacts.
11. Distinguishes between impacts, which are the planned and foreseeable outcomes of an action, and hazards, which are the unplanned or unforeseeable outcomes of an action.
12. Analyses the significance of each impact using a robust, rigorous and replicable methodology that reflects the magnitude and consequence of the impact and the importance and resilience of the affected value or resource.
13. Clearly sets out cause and effect relationships and explores the indirect and flow on impacts that may occur, highlighting impact pathways that exist due to the interconnectedness that exists in physical, ecological and social systems.
14. Explicitly states the extent to which the action contributes to cumulative impacts and proposes mitigation measures that the proponent will implement in response to cumulative impacts. Proponent's mitigation measures are commensurate with the scale of contribution to cumulative impacts.
15. Explicitly states the overall environmental outcomes that are predicted to occur, taking into account the likely effectiveness of mitigation measures. Predicted environmental outcomes are compared to legislation, policy, guidelines and standards.
16. Explores both the likely and worst case environmental outcomes and explains levels of uncertainty in relation to predicted outcomes.

To gain acceptance, good practice ESIA:

17. Facilitates public involvement and provides for response to issues and concerns raised by stakeholders. In this regard the “consult” or “involve” levels of engagement described in the IAP2 spectrum of public participation (<http://www.iap2.org.au/resources/iap2s-public-participation-spectrum>) are considered appropriate for most ESIA processes. Engagement approaches and effort is proportional to potential impacts on stakeholder groups, however, all interested parties are provided with opportunity for full participation, even if not directly affected.
18. Supports transparency in decision making by clearly setting out the positive and negative outcomes that can be expected if an action proceeds.

To achieve desired performance outcomes, good practice ESIA:

19. Leads first to development of measures to avoid or minimise adverse impacts and maximise positive impacts and then, where impacts cannot be avoided or minimised, proposes measures to manage, repair, compensate for or offset impacts.
20. Leads to development of effective mitigation measures specific to the action, location and identified impacts and does not defer to future studies or management plans to be developed in the future.
21. Proposes performance standards in relation to environmental outcomes that are consistent with legislative and policy requirements and stakeholder expectations and protect important environmental values and resources. These performance standards will provide the basis for monitoring actual outcomes and effectiveness of proposed mitigation measures, and as a benchmark in the event that there are later changes in the action.
22. Proposes contingency measures in the event that monitoring indicates that actual outcomes are more significant than predicted outcomes or that proposed mitigation measures are not effective in controlling impacts and achieving performance standards.
23. Leads to a monitoring program that will allow validation of the accuracy of predicted outcomes and the effectiveness of mitigation measures and will check for unforeseen impacts.
24. Includes clear, quantitative and accountable commitments from proponents that are appropriate to the significance of impacts.
25. Provides a basis for concise performance-based conditions to be imposed by decision makers. This in turn provides a basis for future compliance.

These statements were developed by:

Claire Gronow, Jon Womersley, Peter Jones, Jayne Rutter, Penn Lloyd, Toivo Zoete and Chris Milligan

Citation: Gronow C, Womersley J, Jones P, Rutter J, Lloyd P, Zoete T and Milligan C, 2013, Environmental and Social Impact Assessment Good Practice Statements, EIANZ, Brisbane