



30 October, 2012

Native Vegetation Review
Department of Sustainability and Environment
PO Box 500
East Melbourne VIC 3002

ENVIRONMENT
INSTITUTE OF
AUSTRALIA AND
NEW ZEALAND

Email: nativevegetation.review@dse.vic.gov.au

Dear Sir/Madam,

Re: Native Vegetation Review submission – Environment Institute of Australia and New Zealand

The Environment Institute of Australia and New Zealand (EIANZ) is pleased to have this opportunity to provide a submission to the consultation draft of Native Vegetation Review (review).

The EIANZ is the peak professional body for environmental practitioners in Australasia. Our mission is to promote independent and interdisciplinary discourse on environmental issues. The Institute advocates that 'best' environmental practices be delivered by competent and ethical environmental practitioners.

I am forwarding this submission to you on behalf of the Victorian Division of the EIANZ, which represents 312 members out of a total membership of 2,350 (approximately 13% of total membership in Australasia). Our membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists.

A review of the native vegetation clearing regulations is welcomed by the EIANZ and is a positive step in ensuring native vegetation policy is effective in reducing clearing and enhancing biodiversity outcomes within Victoria. EIANZ facilitated a seminar '*A decade of Net Gain – a retrospective look at 10 years of Net Gain & where to from here*' earlier this year and part of the presentations and discussion focused on the potential improvements to the process and the imminent DSE review. Some of the key feedback for improvements to the framework at this seminar included:

- Reducing the complexity through simplifications and clarification of guidelines and habitat hectare methodology
- Investing in additional support and training
- Increasing efficiencies and reducing inconsistencies in outcomes for achieving net gain
- Engagement with industries and environmental practitioners.

Copies of the presentations from the seminar can be obtained through website:

<http://www.eianz.org/aboutus/past-events-2>

As part of our submission to the review, an online survey was forwarded to all our Victorian EIANZ members seeking their views and input broadly on the following areas:

- issues identified with the current permitted clearing regulations
- the four priority reforms, and five supporting reforms, proposed to address these issues
- issues related to implementing the proposed reforms.

Eight EIANZ members provided a submission response to the survey and these results are detailed below. These members came from a variety of professional areas, including environmental consultants, government (state/local) and legal advisors.

A copy of the online survey is provided in Attachment A.

Issues identified with the current permit clearing regulations

Four of the survey questions related to the performance of the existing native vegetation policies and regulations. The responses to the questions were generally positive in terms of:

- Quality of experience in using the native vegetation policies and regulations; and
- The effectiveness of accounting for and ensuring net gain on a project basis.

The results of each question and specific comments are discussed in further detail below.

Survey Question 2: Please describe the quality of your experience with using the Native Vegetation Framework (DNRE 2002) and associated policies and regulations

Overall the responses as to whether the quality of experience with the native vegetation policies and regulations were positive, with six out of the eight submissions indicating at least an above average experience. Comments provided generally re-iterating the positive experience with the current system:

- *'Leading policy and regulation in Australia, but now timely to revise'*
- *'Far better than before the Framework existed. Room for some improvement but overall a sound document.'*
- *'Overall, it is a strong and rigorous approach to biodiversity assessment.'*

An exception to this was the comments provided that the current system is *'too complex, too restrictive'*.

Survey Question 3: Has the current permitting approach been effective in achieving Victoria's Native Vegetation – A Framework for Action's overarching objective of achieving 'net gain' in the quality and quantity of native vegetation across the Victorian landscape?

Three of the respondents indicated that the current permitting approach had been effective in achieving net gain, while four respondents indicated that the approach had not been effective. The following comments were provided where respondents said no to the survey question:

- *'Permitting is aimed at No Net Loss. Net Gain relies on contributions from a number of other programs.'*
- *'But only owing to a lack of monitoring and enforcement.'*
- *'Too many exemptions.'*

Survey Question 4: On a project basis, have you found the current regulations and policies an efficient and effective method of accounting for and ensuring net gain is achieved?

The majority of the of the respondents (five) indicated that that they had found that the current regulations and policies were an efficient and effective method of accounting for and ensuring net gain is achieved, while two respondents indicated that they had not found this to be the case. The comments included the following:

- *'Not effective for all projects.'*
- *'I have seen large and small projects change design/routes/etc ONLY DUE to the vegetation constraints realised through the \$ value now placed on native vegetation.'*

- *'Too much subjectivity, unreasonable outcomes.'*

Survey Question 5: Are there any specific areas of improvement to the current system?

One of the key themes in the response to the recommendations for improvement to the current system was the compliance of the framework, specifically in terms of auditing, monitoring and enforcement of offsets and/or planning permit conditions. Specific comments provided in relation to this and other recommended improvement measures included the following:

- *'There needs to be improved regulation through auditing offsets.'*
- *'Compliance, information systems, local government performance, threatened species, landscape aspects.'*
- *'Actual offsets need to be better monitored and audited, as on the ground offsets generally don't meet what is required on paper. Large projects are often granted exemptions/special considerations, effectively penalising smaller businesses which must meet the requirements in full.'*
- *'Better enforcement with more meaningful penalties, resourcing a stronger monitoring effort. Simplification of habitat hectare calculations while retaining scientific rigour. More strategic use of offsets, in particular to reinforce and link known sites of high habitat significance.'*
- *'Monitoring of offset sites. Monitoring of fulfilment of offset requirements/permit conditions. Enforcement of non-compliance. Integrating all the documents of the Framework and associated docs Mandatory testing of skills of ALL practitioners.'*
- *'Clearer guidelines, less subjectivity, more reasonable outcomes that are not skewed too far in favour of retention in inappropriate cases.'*

Priority and supporting reforms

Survey Question 6: The Consultation Paper suggests four priority reforms. Do you consider that the four proposed priority reforms address the key areas that need improvement?

Overall the respondents to the survey were equally split in terms of whether the four proposed priority reforms address the key areas that need improvement (three answering yes and no, and two unsure). Comments in relation to this question included:

- *'The reforms seek to make much greater use of modelled data for sites (i.e. not assessed), which is often incorrect. The reforms then seek to expedite 'low impact' proposals; but without assessment, we can't know the actual impacts.'*
- *'All are important (depending on how interpreted), also should be reinforcement of existing strengths eg Net Gain objective, hierarchy, with addition of Restore (ie Avoid, Minimise, Restore, Offset)'*

Survey Question 7: The Consultation Paper suggests five supporting reforms. Do you consider that the five supporting reforms are effective in addressing the key issues?

Similar to the four priority reforms responses, the respondents to the survey were equally split in terms of whether the five supporting reforms address the key issues, however with two additional indicating that they were unsure (two answering yes and no, and four unsure). Comments in relation to this question included:

- *'The basis is for reducing regulatory burden and does not strengthen the need to avoid vegetation loss.'*
- *'Paper does not demonstrate a balanced appreciation of the operation of the current offset market.'*

- *'If the supporting reforms were used with the existing Framework (2002), MANY of the issues would be resolved. Stripping back the need to avoid and minimise, expecting people to offset losses, etc. will not address biodiversity impacts - proper regulation and resourcing WILL. Other than some necessary consolidation of documents, the Framework would function well if the supporting reforms were applied to it.'*

Survey Question 8: Please rank each of the following reforms in terms of their effectiveness in addressing the key issues identified with the existing system?

Each of the four Priority reforms were ranked by the respondents, with comments on each also provided. A summary of the effectiveness ranking for each reform is presented in Figure 1 and comments provided below.

Priority reform 1: Clarify and amend the objective for permitted clearing

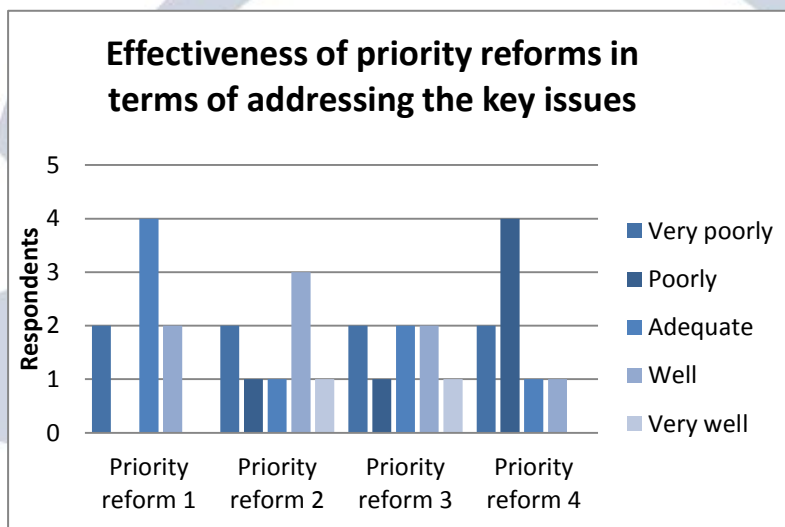


Figure 1: Effectiveness of priority reforms in addressing key issues

Comments provided by respondents for Priority reform 1 include the following:

- *'Proposal recognises native vegetation as a public good, but then proposes to rely on private costs to implement 'avoid and minimise'.'*
- *'The change in wording appears to deliberately set an objective that will be almost impossible to monitor and assess (i.e. measuring the 'contribution made by native vegetation to Victoria's biodiversity'). The current objective (i.e. 'net gain') is precise, and relatively easily evaluated (as per previous accounting) - changing this would only appear to potentially benefit developers/government, certainly native vegetation itself.'*
- *'The point should be that clearing should generally be avoided, given the Net Gain objective and the fact that two thirds of the State has already been cleared'*
- *'The objectives for permitted clearing already are clear and distinguishable. We've had ten years of learning what the rules are and we all know by now. This reform is about shifting the goal posts (watering down) and changing the rules. The issues were not with the objectives but with the resourcing and enforcement around them.'*

Priority reform 2: Improve how the biodiversity value of native vegetation is defined and measured

Based on the comments provided, there is a general concern with the proposed reliance of modelled data through the NaturePrint initiative in terms of the quality and accuracy of the data. Comments provided by respondents for Priority reform 2 include the following:

- *The move away from site assessments and to NaturePrint will reduce the level of potentially important ecological information being captured which cannot be identified from spatial models*
- *Use of NaturePrint is a good initiative. However there are risks associated with withdrawal of site assessments.*
- *Use of mapped/modelled data is fraught with assumptions and errors; experience has shown it to often be either incorrect, and/or not properly address the biodiversity values present at a site. Increased reliance upon this will inevitably lead to perverse outcomes, and an decrease in the quality and extent of Victoria's native vegetation.*
- *Current focus is on vegetation condition as a surrogate for habitat value, without sufficient focus on the fauna habitat values that it provides, other than for threatened species. A genuine landscape-based conservation approach requires a full understanding of habitat functions at a large scale, for all biodiversity, not just (to-day's) threatened species.*
- *Current models are NOT going to provide more accurate measures of biodiversity and the errors in using models are unacceptable to community and biodiversity. The only way this reform could improve how biodiversity values are defined and measured is with some small improvements to the Habitat Hectares methodology, with mandatory training, auditing and regulation.*

Priority reform 3: Improve decision making

Comments provided by respondents for Priority reform 3 include the following:

- *This fails to account for the importance of degraded remnants within an otherwise cleared landscape and may result in the loss of important flora & fauna habitat (even a local level for common species).*
- *Insufficient detail to assess this reform. Not clear how risks to the environment will be managed. Economic ideology to the fore.*
- *If implemented in conjunction with Priority Reform 2, this 'streamlined' process will compound the perverse outcomes previously discussed. Making 'low impact' clearing easier is contingent on having enough detailed information to be able to accurately assess impacts.*
- *This can be code for making it easier to get applications for clearing approved, which should not be the objective. But greater clarity and consistency in decision-making is certainly desirable, underpinned by the hierarchy*
- *The problem is not with the decision-making under the old framework but is with the absence of resourcing/monitoring/enforcement - this is why the 'no net loss' is not being achieved*

Priority reform 4: Ensure offsets provide appropriate compensation for the environment

Comments provided by respondents for Priority reform 4 include the following:

- *This approach is likely to result in the increased clearance of modified remnants*
- *Insufficient detail. Not clear how like for like will operate. eg what are 'strategic biodiversity priorities'?, will these be classified by geography, importance etc*
- *Offsets need to still be last resort, but the current system can lead to silly results such as isolated offset sites. Greater recognition of habitat function and use of offsets to achieve optimum environmental benefits would be good advances in cases where clearing is deemed unavoidable for actions that provide a net community (not personal or corporate) benefit*

- We all know the rules on offsets. The system is not broken, why fix it? Developer, consultants etc. all know what offsets are, how they are calculated, how they cost money - this reform can only be wanting to water down the current offset structure to be more 'appropriate' (presumably less???) - how can less be more appropriate than the current structure when the overall effect of the 2002 Framework has STILL not achieved a 'no net loss' (let alone a 'net gain')! Again, the issue is not with the framework or the offset structure but is with the lack of monitoring/enforcement and resourcing.

Overall, the effectiveness of the priority reforms is considered to be low (Very poorly and poorly) by half the respondents and adequate (three) and well (one) by the remaining respondents. Based on the comments provided, the reforms generally are viewed as watering down the current system and not improving biodiversity outcomes.

- 'The proposed reforms are clearly aimed at reducing costs for developers. While reforms of the current system are necessary, a move towards an economic based system will not result in 'no net loss' as the emphasis is on making the process of vegetation clearance easier.'
- 'A mixture of good, bad and obscure.'
- 'The sum of these reforms will not improve biodiversity outcomes, and may significantly reduce the outcomes currently achieved. One cannot escape the conclusion that the priority reforms have been designed to increase economic returns, at the expense of environmental outcomes.'
- 'Unnecessary reforms if the aim is to improve biodiversity outcomes - the current system could be improved very simply; we've worked for 10 years to make sure everyone understands how biodiversity must be valued. The proposed reforms really aim to water down those values and send us back to lowering value of biodiversity.'

Survey Question 9: Please rank each of the following supporting reforms in terms of providing for adequate and appropriate areas of improvement?

Each of the five supporting reforms were ranked by the respondents, with comments on each also provided. A summary of the effectiveness ranking for each reform is presented in Figure 2 and comments provided below.

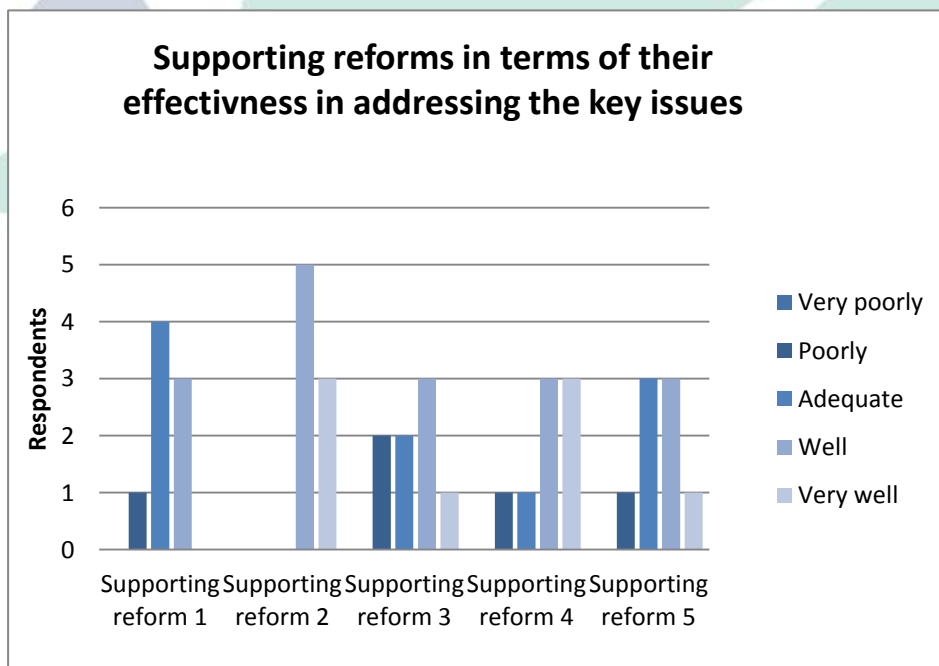


Figure 2: Effectiveness of Supporting reforms in terms of addressing key issues

Overall the five supporting reforms were considered to be effective in addressing key issues, based on the rankings presented in Figure 2. In particular, both the rankings and comments detailed below indicate strong support for reforms 2 and 4, which both relate to regulatory performance and approaches to compliance and enforcement.

Supporting reform 1: Define state and local government regulatory and planning role

Comments provided by respondents for Supporting reform 1 include the following:

- *I thought they were already reasonably clear (except for the plethora of exemptions that have pervaded the system).*
- *Yes, I'm sure some people could benefit from this. I think it's pretty clear-cut (referral mechanisms from LG to SG, etc.).*

Supporting reform 2: Better regulatory performance

Comments provided by respondents for Supporting reform 2 include the following:

- *This will require resourcing but needs to be supported on the basis of the long-term benefits to the environment, the community and the economy.*
- *Definitely YES. The current Framework function would VASTLY be improved by this!*

Supporting reform 3: Improve offset market functionality

Comments provided by respondents for Supporting reform 3 include the following:

- *Over the Counter better through private brokers. Property Vegetation Plans failed before. Lack of understanding of current market (eg trading up not mentioned in the Paper, prices have dropped and stabilised). Paper fails to recognise that Victoria has a world-leading offset market (eg compare to NSW)*
- *As long as the great god of markets doesn't take over from common sense.*
- *It's already operating in a commercial way - demand vs supply, market forces already apply - there's competition, openness, choice etc. - some people just don't like the way the market forces/commercial function result in very expensive offsets (sometimes) - if you don't like the cost of offsetting, don't remove the vegetation. Anyway, it's only the more scarce vegetation that costs more; this vegetation SHOULD cost more to offset - primarily as a deterrent to clearing it in the first place and secondly because we can't replace it once it's gone! Offsetting is not as good as retaining but is a practical working solution to an inevitable likelihood (i.e. inevitable clearing).*

Supporting reform 4: New approaches to compliance and enforcement

Comments provided by respondents for Supporting reform 4 include the following:

- *Complexity a minor factor. Main problems have been lack of will and lack of resources.*
- *Increased monitoring/auditing of offsets is crucial, however, if this is done in a cost-cutting way that only appropriately addresses 'high-impact' clearing and offsets, there will be many poor outcomes at the lower end of the scale (compounded if modelled vegetation is widely used).*
- *Increased monitoring/auditing of offsets is crucial, however, if this is done in a cost-cutting way that only appropriately addresses 'high-impact' clearing and offsets, there will be many poor outcomes at the lower end of the scale (compounded if modelled vegetation is widely used).*
- *The new approaches need to be stronger than currently, not weaker. Note that this will also require an education program for the judicial sector (VCAT members, magistrates) on the seriousness of such offences.*

- **YES PLEASE!!** This is the crux of the issue with the current Framework. Employ some staff, give some resourcing to the Policy and off we all go! Half of the non-compliance happens because **PERMIT HOLDERS KNOW DAMN WELL THEY'LL GET AWAY WITH NOT OFFSETTING (AT ALL/ADEQUATELY!)**. Hence, even with offsets which tried to achieve a net gain (or at least, no net loss) we still ended up with **A NET LOSS!** (That's just considering extent of 'native veg cover' not including the **QUALITY** of the vegetation/understorey and the associated loss in biodiversity that comes with degraded quality).

Supporting reform 5: Continuous improvement program

Comments provided by respondents for Supporting reform 5 include the following:

- Generally sound, except for the focus on use of modelled data.
- The term is a bit motherhood but the point of ensuring that changes made in the name of improvement actually lead to improved performance should not need any arguments.
- Is this really a reform? Isn't this already happening with all of the documents that have been released over the past 10 years to augment the Framework (which, incidentally, needs consolidating)? This should be standard procedure and I don't consider this a 'reform'.

Issues related to implementing the proposed reforms

Survey Question 10: Are the 'proposed actions' for the priority and supporting reforms adequate in addressing the aims of the reforms and practical to implement?

Three of the respondents (out of eight) indicated that the proposed actions were adequate in addressing aims of reforms and practical to implements. There was however uncertainty in whether the proposed actions were adequate in addressing the aims of the reforms (three responses) and practical to implement (four responses).

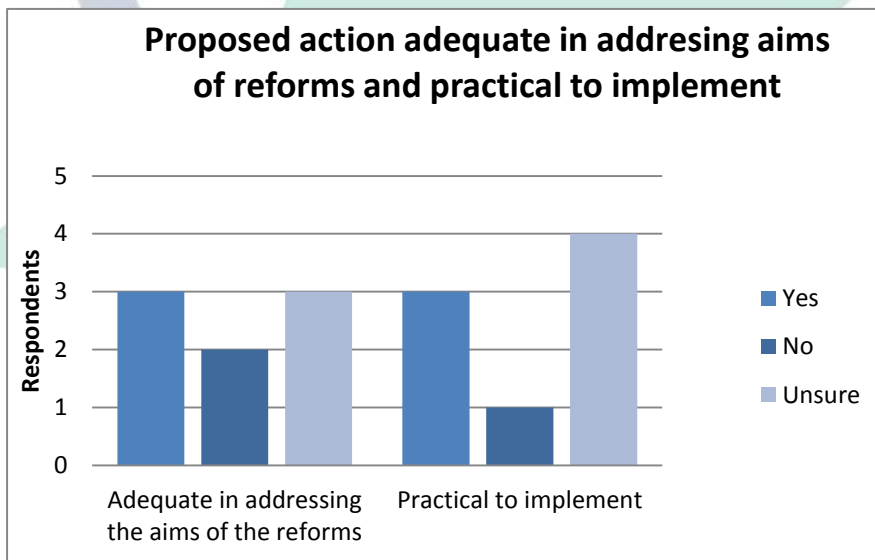


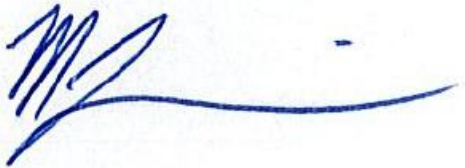
Figure 3: Adequacy of proposed action in addressing aims of reforms and practicality to implement

Comments provided by respondents include the following:

- *Some good reforms, some bad. Overall a lack of detail so hard to assess.*
- *It will all come down to the risk that changes made to "improve" the system are disguised attempts to undermine native vegetation protection. 24 years on from the FFG Act I would have hoped we would be beyond that risk by now but vigilance remains essential.*
- *The main issue is the overarching aims/objectives of the reformation of the Framework cf. the reforms themselves! Some are not practical to implement e.g. using models is inaccurate; many actions are ambiguous and build-in potential for subjectivity and 'deals'. Some are okay. But overall, whilst they might mean the reforms can be achieved, the question is whether the reforms are based on good, biodiversity-driven aims/objectives.*

EIANZ welcomes any further opportunities to discuss details of this or other policy reviews by the Department.

Yours sincerely,



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EIANZ Victorian - submission to DSE's Native Vegetation Review

*** 1. Please describe your role in using of the Native Vegetation Framework (DNRE 2002) and associated policies and regulations:**

- Environmental consultant
- Government (State/local)
- Industry/Private company
- Student
- Other (please specify)

*** 2. Please described the quality of your experience with using the Native Vegetation Framework (DNRE 2002) and associated policies and regulations**

- Poor Below average Average Above average Excellent
-

Comments

3. Has the current permitting approach been effective in achieving Victoria's Native Vegetation – A Framework for Action's overarching objective of achieving 'net gain' in the quality and quantity of native vegetation across the Victorian landscape?

- Yes
- No
- Unsure

If no, please specify

*** 4. On a project basis, have you found the current regulations and policies an efficient and effective method of accounting for and ensuring net gain is achieved?**

- Yes
- No
- Unsure
- N/A

If no, please specify

*** 5. Are there any specific areas of improvement to the current system?**

*** 6. The Consultation Paper suggests four priority reforms.**

Do you consider that the four proposed priority reforms address the key areas that need improvement?

- Yes
- No
- Unsure

If no, please specify

*** 7. The Consultation Paper suggests five supporting reforms.**

Do you consider that the five supporting reforms are effective in addressing the key issues?

- Yes
- No
- Unsure

If no, please specify

*** 8. Please rank each of the following reforms in terms of their effectiveness in addressing the key issues identified with the existing system?**

Very poorly Poorly Adequate Well Very well

Priority reform 1:

Clarify and amend the objective for permitted clearing

Please provide any comments to clarify your ranking

Priority reform 2:

Improve how the biodiversity value of native vegetation is defined and measured

Please provide any comments to clarify your ranking

Priority reform 3:

Improve decision making

Please provide any comments to clarify your ranking

Priority reform 4:

Ensure offsets provide appropriate compensation for the environment

Please provide any comments to clarify your ranking

Overall ranking of reforms

Please provide any comments to clarify your ranking

	Very poorly	Poorly	Adequate	Well	Very well

*** 9. Please rank each of the following supporting reforms in terms of providing for adequate and appropriate areas of improvement?**

	Very poorly	Poorly	Adequate	Well	Very well
Supporting reform 1: Define state and local government regulatory and planning role	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide any comments to clarify your ranking

Supporting reform 2: Better regulatory performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please provide any comments to clarify your ranking

Supporting reform 3: Improve offset market functionality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please provide any comments to clarify your ranking

Supporting reform 4: New approaches to compliance and enforcement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please provide any comments to clarify your ranking

Supporting reform 5: Continuous improvement program	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Very poorly Poorly Adequate Well Very well

Please provide any comments to clarify your ranking

*** 10. Are the 'proposed actions' for the priority and supporting reforms adequate in addressing the aims of the reforms and practical to implement?**

	Yes	No	Unsure
Adequate in addressing the aims of the reforms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Practical to implement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If no, please provide comments

Done

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