

Best practice with Victorian environment effects statements

Anticipating and dealing with avoidable problems

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Overview

- Who cares what the lawyer thinks?
 - good question
- Front-end (pre-EES)
 - referrals
- Back-end (post-EES)
 - panels
 - trends and priorities in panel hearings
 - Commonwealth interface

Front-end issues

- Understand the process and its expectations
 - planning approval options for Victorian projects
 - local and State government tensions
 - other Victorian consents: joint exhibition
 - interface with the EPBC Act: use of accredited process?
 - potential for conditional ‘no-EES’ decision
 - most importantly, it’s not a ‘box ticking’ exercise

Front-end issues

- Referrals
 - pre-referral engagement with government
 - flexibility with project description and process
 - think through the implications of the referral form questions before you answer them
- Consultants
 - consider experience of key consultants as expert witnesses from the outset
 - scope

Back-end issues - Panels

- Appointed by Minister for Planning with approval of Governor in Council
 - independent (detached, critical) inquiry
 - specialist panellists
- Dual statutory functions
 - planning scheme amendments
 - works approval applications
- Terms of reference
 - not binding if also reporting on PSA

Back-end issues

- Recurrent issues and problems at panels
 - project definition
 - how it has evolved
 - alternatives
 - cumulative impact assessment
 - where to draw the line
 - insufficient detail in characterising ‘second order’ impacts
 - particularly for construction-related impacts
 - differing views on risk-based approach

Back-end issues

- Recurrent issues and problems at panels (cont)
 - Stakeholder engagement
 - Social impact assessment
 - particularly important during construction
 - capacity/capability
 - Government agency engagement
 - varies
 - assume potential for inconsistency, duplicity, and incompetence

Commonwealth interface

- EPBC Act
 - also triggered by referral
- Accreditation of Victorian assessment process
 - default position
 - not always going to be best option
- Have been some problems
 - panel report not addressed matters of Commonwealth interest

Concluding thoughts

- EES needs to
 - present a project narrative
 - be credible
 - systematic and comprehensive
- Don't cut corners
 - risk-based assessment
 - panels can perceive risk differently to proponents or government agencies

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