

EIANZ Conference Notes from Panel Session on – Reimagine an alternative landscape scale approach to national environmental law

Extract from notes from SEA session at EIANZ conference

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Australian Context

- Australia has a federal system of government where state and territory governments have primary responsibility for environmental assessment
- The main national environmental legislation is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- The EPBC Act gives the Federal Government a role in protecting matters of national environmental significance (MNES), e.g. World Heritage properties, listed threatened species and ecological communities, migratory species, Ramsar wetlands etc.
- The EPBC Act includes requirements for impact assessment of proposed projects. Part 10 of the Act also includes provisions for strategic environmental assessment (SEA).
- A statutory 10 yearly review of the EPBC Act will commence later this year.

The topic put to the Panel was *Imagine: A national environment Act focused on landscape scale approaches*

This presentation imagines a transition in our approach to impact assessment. No longer is the emphasis on considering individual project impacts – instead, projects are assessed for their compliance with regional objectives and strategies. Strategic environmental assessment (SEA) is the instrument that drives this change.

We will argue that such an approach will provide for improved decision making against sustainability principles, increased certainty and reduced costs for project proponents and more meaningful public engagement. It draws on work undertaken over the last two years by an SEA working group, under EIANZ's SIS on Impact Assessment, on developing objectives and principles for good practice SEA in Australia and New Zealand.

The topics that emerged from this Panel discussion have been collated into the points below:

- 1. Upfront, there is a question of whether we need to better define what strategic environmental assessment (SEA) is in Australia?**
 - recognising we split it into two types: statutory and non-statutory
- 2. SEA needs a clear set of principles for Australia**
- 3. There are clear benefits for undertaking SEA**
 - It brings rigour, consistency, and reliability to assessment processes

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- It marries up the desires of industry for quick processes with aims for improved biodiversity outcomes.
 - Statutory (legal) SEA can streamline approval pathways, provide faster approvals once done eg Part 10 of EPBC Act
 - For Non statutory SEA, it provides you with an answer to the major environmental conundrum so know what to expect before proceeding with individual proposals
 - Other strengths of SEA – it can:
 - operate and integrate approvals/consideration across jurisdictions
 - better provide the social license to progress because of the inherent level of engagement with society that is undertaken as part of SEA.
 - go beyond conservation by providing for the integration of land use and transport planning with strategic environmental benefits to achieve.
 - allow for triple bottom line assessment (economic, environment, social)
 - enable strategic and policy goal setting and projects to align with planning parameters/ overall strategic approach.
 - However key issues to consider in actually delivering these benefits include the heads of power/requirement to undertake, the role of government, optimising the scope of the assessment, implementation and delivery mechanisms, and funding.
- 4. SEA clearly has great application in strategic and statutory planning at a landscape scale**
 - 5. Indeed SEA could be a compulsory component of regional and local planning**
 - 6. SEA has a lot of potential to help us address current national and landscape scale environmental issues including biodiversity loss**
 - 7. There are also existing alternatives to SEA for evaluation of impacts at a landscape scale of varying success, such as conservation planning and the existing Biobanking and bio certification measures in NSW.**
 - 8. There are also bioregion plan provisions in the EPBC Act that could be used that may provide a real opportunity**
 - 9. The existing SEA processes in legislation could be used more than they are currently to address impacts at a landscape scale**
 - Existing strategic assessment provisions under Part 10 of EPBC Act are entirely optional processes relying on a State Government or corporation to engage in SEA process.

10. There are issues with current SEA processes but also solutions:

- [Proposing] Substantial law and institutional reform – independent commission to steer the right direction.
- One of biggest challenges of SEA under EPBC Act is that Part 10 SAs are limited to MNES –
 - unless can be married to a state process that picks up other environmental issues
 - so constrained in terms of values that can be evaluated, therefore a question of whether it is really strategic?
- One of concerning areas is dealing with cumulative impacts – no guidelines – not done well
- There is a danger, and a balancing act required, in terms of managing scope creep in terms of needing to answer all questions relevant in an area subject to SEA rather than just dealing with initial problem
 - Changes would be needed to the Act to limit scope to what needs to be considered at more strategic level and defer aspects that are less critical to a lower level of assessment
- They can take way too long (SEA)
 - need to have good governance to listen to interests and have a robust decision making process
 - need to come up with guidelines with how to do it well
- Costs and need for resources to fund for offsets etc,
 - issues with SEA is no proponent is willing to spend the upfront money e.g. different levels of funding for different project types/assessment types.

11. Agreed that there is a key role for the Federal Government in facilitating SEA through incorporation into State strategic planning in Australia and resolving the funding/resourcing constraints

- Potential role for Federal Government–
 - Could be standard setting approach from Federal Government so it sets high standards on how we do spatial planning (within States) and include SEA
- Need the Federal Government to have a role to ensure international obligations are transferred into strategic planning at a state and local level.
- If Federal Government is to bind states such that SEA becomes effective as part of planning instead of project assessment, how would this be achieved?
 - Federal Government could fully or partially subsidise initial costs
 - Focus on processing times and certainty of outcomes rather than dollar – doing a big SEA and getting developers to agree

12. There are current limitations to the extent the Commonwealth can require States to implement such planning reform

- Australian constitution is silent on environment –
 - signed up to so many international treaties etc
 - which gives Federal Government power to exercise authority in all these aspects through constitution – but what can it do?
- If can't find a head of power then get all states to agree and sign for Federal Government to have power.

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13. There are some existing and possible initiatives that will lend towards or assist future SEAs in Australia

- Regional sustainability planning
- QLD gov looking at environmental resource mapping of the entire state

14. Should we note the differences in applying SEA to policy versus planning?

Next steps

EIANZ and the SEA working group will use these points in discussions about proposed changes to national environmental law including revisions to the Environment Protection and Biodiversity Conservation Act, 1999.

session notes