OUTLINE

1. What EIA options are available?
2. What is best option for your project?
3. What are the potential legal risks?
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Environmental authority
- Standard, variation or site-specific application
- EIS - voluntary or required
- EIS is accredited process
- EIS process - Chapter 3
- Coordinated project
- Not an approval
- EIS or IAR
- Accredited processes

- Development approval
- EIS is accredited process but rarely used
- New planning legislation?
1. What EIA options are available?
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WHAT IS BEST OPTION?

Key factors…
KEY FACTORS

Resource project?
"resource activities carried out, or proposed to be carried out, under 1 or more resource tenures, in any combination, as a single integrated operation"

Resource activities?
mining activity, petroleum activity, geothermal activity, GHG storage activity

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KEY FACTORS

- Criteria for coordinated project - s.27
- Up to proponent to make application
- Unilateral power
- CG not bound to approve
KEY FACTORS

- Requirement to make referral
- Minister or delegate’s decision
- Quality of referral likely to affect controlled action decision and assessment approach

WHAT IS BEST OPTION?

- Whole of project assessment?
- Streamlining of later applications?
- Accredited process for EPBC Act?
- Exemptions?
### WHAT IS BEST OPTION?

<table>
<thead>
<tr>
<th>Coordinated project</th>
<th>EP Act</th>
<th>SPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIS</td>
<td>IAR</td>
<td>EIS</td>
</tr>
<tr>
<td>Whole project assessment?</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Approval?</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Streamlining of later applications?</td>
<td>SPA app'n streamlined</td>
<td>No further EIS</td>
</tr>
</tbody>
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### WHAT IS BEST OPTION?

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<td>Accredited process for EPBC?</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Relevant purpose for VMA?</td>
<td>✔</td>
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**OUTLINE**

**LEGAL RISKS**

- Project description
  - flexibility vs. certainty
  - part of larger project?
  - should components be excluded?

- Terms of reference

- Assessment

- Legal challenges
LEGAL RISKS

Project description
• flexibility vs certainty
• part of larger project?
• should components be excluded?

Terms of reference
• streamlined, less prescriptive TOR

Assessment
• timing
• assessment meets TOR?
• facilitate achievable conditions
• withstand legal challenge

Legal challenges
LEGAL RISKS

Project description
- flexibility vs certainty
- part of larger project?
- should components be excluded?

Terms of reference
- streamlined, less prescriptive TOR

Assessment
- timing
- assessment meets TOR?
- facilitate achievable conditions
- withstand legal challenge

Legal challenges
- procedural fairness
- broader scope of challenges
- misleading and deceptive conduct

RECOMMENDATIONS

- Develop clear approvals strategy
  - Project description
  - Likely regulatory approvals
  - Anticipate risks
- Consider early and revisit…