



ENVIRONMENT  
INSTITUTE OF  
AUSTRALIA AND  
NEW ZEALAND

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28 April, 2010

Hon. John Pandazopoulos, MP  
Chair  
Environment and Natural Resources Committee of the Parliament of Victoria  
5/50 Robinson Street  
Dandenong VIC 3175

Via email: [john.pandazopoulos@parliament.vic.gov.au](mailto:john.pandazopoulos@parliament.vic.gov.au)

Dear Mr Pandazopoulos,

### **Re: Inquiry into Environmental Effects Statement Process in Victoria**

The Environment Institute of Australia and New Zealand (EIANZ) is pleased to have this opportunity to provide a submission to the Environment and Natural Resources Committee's (ENRC) inquiry into the Environmental Effects Statement process in Victoria.

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 310 members out of a total membership of 2,111 (approximately 14% of total membership in Australasia). Our membership is represented by a diverse range of technical disciplines including scientists, engineers, lawyers and economists.

In accordance with the requirements of the ENRC Committee (correspondence, 15 April 2010), this submission is structured to provide comment on the following issues:

- The key strengths and weaknesses of the Environmental Effects Statement (EES) process in Victoria
- Features and examples of environment impact assessment best practice, both local and international
- Current governance arrangements with the Minister for Planning responsible for administering the *Environmental Effects Act 1978*
- The EIANZ's views of the role of Strategic Environmental Assessment
- Recommendations on how community and industry consultation could be improved

The contents of this submission are based on the following sources:

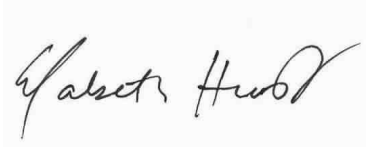
(1) **a survey of members** designed by the ENRC Secretariat specifically for the purposes of this enquiry, and

(2) **a structured 3 hour workshop** with nationally recognised environmental practitioners in EES, representing the EIANZ's expert panel. These practitioners represent many of the major engineering consultancies tasked with completing EES for infrastructure Projects over the last 35 years, the same period over which the EES legislation has been active.

I have developed a fairly brief submission to the ENRC in order to clarify the key issues without providing overwhelming amounts of information. I would be delighted to provide you with further clarification or detail during the duration of the enquiry in order to elaborate on any aspect of the submission. I can be contacted on 0406 082 308 or by email on [ehurst@pb.com.au](mailto:ehurst@pb.com.au)

We wish the Committee well in its inquiry into this important issue and would be delighted to continue supporting the ENRC on other reviews of environmental legislation.

Yours sincerely,



**Elizabeth Hurst**  
President, EIANZ (Vic Division)

Att. Submission and Appendices

# Environment Institute of Australia and New Zealand (EIANZ)

Submission to the Victorian Environment and Natural Resources Committee

## Inquiry into the Environment Effects Statement process in Victoria

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### 1. Introduction

#### 1.1 Structure of Submission

The Environment Institute of Australia and New Zealand is pleased to have this opportunity to provide a submission to the Victorian Environment and Natural Resources Committee inquiry into the Environmental Effects Statement process in Victoria.

As requested by the Committee (letter dated 15 April 2010), the Institute's submission is structured to provide comment on each of the key issues below:

- Section 1: Introduction, addressing the scope of this enquiry and the role of EIANZ practitioners in this field
- Section 2: The key strengths and weaknesses of the environmental effects statement in Victoria, addressed in order of the EES process from scoping to completion (as reflected by the Guidelines);
- Section 3: Current governance arrangements with the Minister for Planning responsible for administering the *Environment Effects Act 1978*;
- Section 4: Features and examples of environment impact assessment best practice – both local and international;
- Section 5: The EIANZ's views on the role of strategic environmental assessment; and
- Section 6: Recommendations on how community and industry consultation could be improved.

The results of a members survey, taken to support preparation of this submission are included within Appendix 1. Appendix 2 provides summaries of professional biographies of key Institute members contributing to this submission.

Any page references listed throughout the submission are made in reference to the relevant section of the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (seventh edition, 2006), published by the Victorian Department of Sustainability and the Environment ('the Guidelines').

#### 1.2 The Role of Environmental Practitioners (EIANZ)

The Institute contends that environmental practitioners have a critical contribution to make to the field of environmental impact assessment. Such a contribution could include the following.

- Taking the lead or contributing role in delivering an EES
- Advising decision-makers at local, regional, state and national levels on how best to integrate the consideration of environmental impacts into land use planning, design of infrastructure and assessment decision-making.
- Providing an information conduit between policymakers, community groups, industry and business, noting that environmental professionals are part of these groups too.
- Providing multi-disciplinary input into standards and guidelines.

## 2. Key strengths and weaknesses of the EES process in Victoria

### 2.1 Determining when an EES is required

**Issue 1: The EES Guidelines lack sufficient detail to determine what types of project are likely to trigger an EES.**

- Proponents and environmental practitioners are often unable to accurately determine which projects are likely to trigger an EES until the Minister has issued his decision. This creates significant risk and uncertainty for the proponent, particularly in terms of cost and time (delays). This is primarily caused by a lack of detail in the Guidelines, as well as an over-reliance on the Minister to determine what project may require an EES. This decision in turn, can be perceived to become politically driven rather than based on significant environmental risk. Environmental practitioners therefore face significant challenges advising their clients on how to approach the environmental assessment and regulatory processes surrounding a large development. This includes for instance, the extent of a flora and fauna assessment, or the scope of public consultation. Clearer triggers are required to streamline this process.

**Issue 2: A lot of effort goes into avoiding the EES Process**

- The uncertainty surrounding the need for an EES, and the costs and delays associated with the process, usually results in a risk-adverse approach from a proponent. That is, they will undertake only high level desk-top environmental assessments, seek to avoid referral where possible, or delay it until they have further information. This has the result of further delaying a development and is not in line with the general intent of the process i.e. to accurately assess the environmental risks associated with the development.

**Issue 3: Very few projects trigger an EES**

- Very few projects trigger the EES Process in Victoria, unlike many other states and countries e.g. New South Wales and the United Kingdom. This is of concern to the EIANZ. Other regulatory processes that cover these developments, such as the Planning and Environment Act 1987 (through the Planning Permit or Planning Scheme Amendment processes) or the Environment Protection Act 1970 (through Works Approvals and Licenses) don't necessarily provide the appropriate scope for a comprehensive environmental assessment, due to their restricted scope. A Works Approval Application only covers emissions to air, water and land for instance, not allowing for the integration of other issues such as flora and fauna. The Planning Process does provide a wider scope and remit, however the process can rely too heavily on expertise from local authority planners who do not necessarily have the expertise in environmental assessment. In this case in particular, many of the environmental assessment conditions are carried out as a condition of the planning permit, which can be too late to incorporate environmental issues into the final design.

Examples include:

1. The [Sugarloaf Pipeline](#)
2. The HRL 550 Megawatt Dual Gas Fired power station in Morwell.
3. Proposed changes to the Urban Growth Boundary
4. Wind farms such as Macarthur Wind Farm

Conversely one of the perceived strengths of the Victorian legislation, is that projects that in other states would require an EES, can be handled through the Planning and Environment Act here in Victoria. The defining issue here, seems to be the time and cost attached to the process and the relevance of the scope of the assessment (covered further below).

Recommendations: *Expand and update the Guidelines to include:*

- 1. Inclusion of impact specific triggers or a list of project types / sizes that are likely to trigger an EES. This should include a broader (longer) list of developments to allow for integrated environmental assessment. The increase in projects triggering an EES must be offset by the need to reduce the scope (and size) of the EES as well as decreasing the approval timeframe. The EIANZ recommend a review of triggers in the UK EIA Guidelines as a guide.*
- 2. Undertake a financial modelling exercise to determine the likely cost impacts associated with introduction of these new triggers.*



## 2.2 EES Scoping

### Issue 1: A risk-based approach should be applied to the EES scoping stage (in developing Terms of Reference)

- One of the key objectives of the EES process is to ensure that the extent of the investigation required is proportionate to the risk of adverse effects (Guidelines, p.3). This approach should ideally require the proponent to undertake a detailed risk assessment for the project, which should then be used as the basis for decisions about the scope of the EES i.e. only significant risks are addressed in the subsequent scope agreed to by the Panel and Minister. The Institute notes a tendency on behalf of the government to err on the side of caution such that the Terms of Reference are often stretched out in scope to include all possible issues rather than focussing the assessment on significant risks. A case in point is the Port of Melbourne Channel Deepening Project, where the risk assessment later included over 1000 risk items (as defined by the wide scope of the EES). This risk-based assessment philosophy is currently being applied more frequently by the EPA in the application of risk-based monitoring for licensed sites for instance, issued in March this year as part of a reform to its licensing process, and in their assessment of Works Approvals.

### Issue 2: Risk assessments are undertaken too late in the EES Process

- The current process lacks adequate guidance to a uniform approach to undertaking a Project risk assessment. Beginning the risk assessment early in the process ensures appropriate scoping of the EES document and provides assurance that contentious issues (such as downstream or indirect impacts such as greenhouse emissions) are addressed in a transparent and consistent manner. Public availability of this information is also likely to impact positively on the public's perception of a project, particularly in regard to transparency of the scoping and assessment process.
- The implementation of a Strategic Risk Assessment Process would complement this process (see later section on this topic).

#### Recommendations:

1. *Develop more detailed guidelines for undertaking project risk assessments.*
2. *The results of the risk assessment process should be used to influence the EES Scope and Terms of Reference to ensure that the extent of the investigation is commensurate with the project risk.*
3. *The EES Terms of Reference should focus on significant environmental or social risks*
4. *The results of project risk assessments should be made public where possible, at an early stage of the EES process (prior to submission)*

## 2.3 Preparation, Submission and Assessment of the EES

Please refer to following sections which address issues around governance, cost and timeframes for preparation, submission and assessment of the EES.

## 2.4 Panels

### Issue 1: Over-reliance on Panels during EES Process

- The EIANZ is concerned about the over-reliance on Panels and Technical Reference Groups in the EES Process. In responding to many environmental enquiries or risks, it is felt that the Panel/s (and Technical Reference Group) often fall back to making overly conservative responses that sometimes require unnecessarily (detailed) environmental assessments. There was further concern over the heavy reliance on Panels to act as the arbiter in the EES process. Rigorous approaches to early risk assessment and scoping would probably reduce the reliance on Panels. See Section below for a more detailed discussion of costs associated with the Panel.

## 2.5 Is the EES Process Effective?

### Issue 1: No process for determining if the EES was effective i.e. lack of provision for post-assessment auditing

- The current EES Guidelines and process do not automatically require proponents to undertake a Project audit at completion to determine if the EES was effective (recognising that most projects require issue-specific monitoring and audits to be carried out e.g. stream sampling). This is critical also to the ability of Government policy makers to respond to the EES process.
- According to the EIANZ expert panel, the Victorian Government has not undertaken a broader technical assessment of EES Projects post-completion, to indicate whether or not the process is effective in terms of managing environmental risk (as opposed the efficacy of the process itself).
- A deficiency in many environmental impact processes relates to an absence of operational monitoring to assess whether the proposed controls are adequate or impact predictions correct. In contrast to the impact assessment process provided for particular projects under the Environment Protection Act 1970 (Victoria), where steps such as auditing of operational licences are consequent to the impact assessment, the EES process does not typically include provision for any post-assessment auditing. The EIANZ also recognises that some detail, e.g. prescription of remediation measures, is unable to be specified during the impact assessment phase, and that a clearer process for ensuring such issues are followed through to project operation would be a valuable addition to the current Victorian process.

#### Recommendation:

1. *The Institute recommends that consideration be given to provision of post-assessment monitoring processes (e.g. audits) that can serve to identify instances where impact assessment may have been insufficient and to provide assurance that performance requirements are achieved during operation.*

## 3. Governance arrangements

### 3.1 Timeframes and Cost

#### Issue 1: Projects are subject to up to 12-18 months unnecessary (cumulative) delays

- The EIANZ expert panel calculated the average time spent waiting for approval during the various

stages of the EES process, which came to approximately 12-18 months. A significant amount of this time is considered “dead” time from the perspective of the proponent and consultant, while they wait for Government or the Minister to review and sign off on documentation. This is clearly unacceptable from the point of view of process efficiency, cost and public accountability. This included delays associated with Government ‘signing off’ on the:

- referral (estimated 3-4 months); the scoping guidelines (1 week - 3 months);
- authorisation to exhibit (up to 2 months);
- public review (4-6 weeks)
- Minister’s final decision (up to 6 months despite the Guidelines indicating this may only takes 20 business days, ref. p 12)

This does not include time required to present to the panel.

### Issue 2: Timelines for Government ‘sign-off’ and approval are not present in the Act

- Unlike other legal instruments such as the Major Transport Facilitation Act and Planning and Environment Act, the EES Process does not contain any timelines for Government decisions (approvals) for each stage (such as those listed above). This would significantly improve the efficiency of the process and allow proponents to “push back” if Government Agencies were delaying making a decision.

### Issue 3: The Minister is responsible for signing off too many steps in the process

- The most significant delays to the EES Process are created during periods where Ministerial sign-off is required (3-6 months unless the project is considered of State significance). The EIANZ believe the process could be streamlined by delegating some of this responsibility to the Department (DPCD). This approach could be adjusted according to the risk and profile of the project.

### Issue 4: Panel hearing process is protracted and could be improved by limiting the number of projects that are subject to this process

- Significant delays are caused through protracted Panel hearings, which can stretch up to 6 months in duration. The EIANZ has considered whether or not this process should be applied to some, not all projects, depending on the level of risk or public profile.
- It was noted that the *Enquiry by Submission or Enquiry by Conference* option in the Guidelines is rarely, if ever used.

### Issue 5: An EES Process is unnecessarily expensive

- Significant costs are associated with the EES process, largely caused by the unnecessarily wide scope of the EES (requiring multiple complex assessments where they are not always needed) and the significant delays caused by the process.
- A more minor, but pertinent comment was made by the Expert Panel in regard to costs associated with EES distribution. The Guidelines require the EES to be printed and made available to the public. In the case of the Frankston Bypass, 200 main volumes were printed at a total cost of \$100,000 to \$200,000. These up-front costs are required in order to make the document available for purchase at a fee of \$50 if requested. In the case of this project, only one copy was requested! Given the environmental implications of this printing (for landfill) and the unnecessary cost burden, do we still need hard copies?



#### Recommendations:

1. *Guidelines to include timeframes for Government decisions / approvals for each stage of the EES process*
2. *Guidelines to be updated to allow the Department (DPCD) to make more decisions on behalf of the Minister i.e. reduce reliance on the Minister for approval at each point in the process*
3. *Consideration should be given to whether or not some EES Projects could be subject to a shorter, less complex public hearing such as an Enquiry by submission or Enquiry by Conference. More detailed guidance should be developed to encourage the consideration of this approach.*
4. *Provision of public copies of the EES should be limited to CD. Paper copies should only be required to be provided at local Government offices, public libraries or other major public centres as required.*

### 3.2 Cost of panel hearings

- There is a huge imposition on private proponents to cover the costs of a panel hearing. These costs can range from \$50,000 to \$500,000. At the higher end, for projects such as the channel deepening, the estimated panel costs were certainly in the millions of dollars. The whole process can cost up to \$20,000 a day with the addition of preparation time for some projects.
- As a general principle, the EIANZ believe the proponent should pay for the hearing but may in some cases be waived at discretion of the Minister for smaller proponents if the risks are low. Consideration of the application of a statutory fee as an alternative should be given, in order to incentivise the speed of the process.

Example: In the case of Mornington Yacht Club, a small proponent requiring an EES for upgrade works, they were advised to allow for up to \$100,000 for a panel hearing. This is a significant financial imposition for a small club.

### 3.3 Integration with Other Legislation

#### Issue 1: The EPBC Act need to be better integrated with the EES Process

- Governments are increasingly aware that there needs to be better cross-departmental ministerial and jurisdictional communication and cooperation if government is to work effectively to address the complex issues that arise from industrial development, at the environmental, social and economic levels.
- There are inconsistencies in the application of State and Federal legislation which can create delays and inefficiencies in the assessment process. The EPBC referral process for instance, will tend to require more detail as part of a referral submission compared with an EES. This results in a tendency for proponents to submit an EPBC referral after completing detailed survey which then requires the proponent to "backtrack" through state regulatory process. If the processes were consistent (focusing on the detail required), this would allow all referrals and approvals to be better co-ordinated.
- Compared with the EPBC Act, there is no "big stick" for referral under the EES Act, and therefore the EES process doesn't encourage proponents to refer projects.

## 4. Best practice – local and international

### 4.1 How do we stack up against local and international best practice?

- The EIANZ were not aware of any significant environmental 'disasters' following development and implementation of an EES. The EIANZ believe the process allows for development of rigorous EES documents on the whole. The only concern is whether or not this is an indicator of a belts and braces approach, suggesting possibly that our EES process is too conservative, particularly in respect to the expansive scope for projects.
- The requirement for widespread public and stakeholder consultation was considered to be a positive aspect of the EES process, recognising further improvements could be made.
- The EES process is not accompanied by a Strategic Impact Assessment unlike many other countries
- The EES process in Victoria is very elaborate but few projects cause it to be triggered

### 4.2 What can we learn from others?

- Internationally, regulatory reform in the both the United Kingdom and New Zealand indicates a move towards adopting a risk-based approach to regulation.
- Nationally, for example, the NSW Department of Primary Industries and Resources of South Australia will assess the risk of proposed gas and geothermal projects (low, medium or high risk) and prescribe the level of assessment required in accordance with the risk level.
- Guidelines for assessment under the EE Act provide some, but not enough guidance for inclusion of cumulative and indirect effects in the scope of an EES (Guidelines, p.18). In the case of the Gladstone Port Development in Queensland, the proponent was required to look at cumulative impacts in much more detail. The Government required the Queensland Ports Authority to coordinate an assessment of all of its port projects (from various different developers).
- SKM's Mt Sterling alpine resort EES completed in the mid 1990s required a strategic environmental assessment, resulting in more sustainable and innovative approaches to development.

## 5. Strategic environmental assessment

### Issue 1: The EES Process does not include the need for Strategic Environmental Assessment

- The EIANZ believes that large policies and plans of state importance requiring the development of infrastructure should be subject to a Strategic environmental assessment by the Victorian Government.
- Strategic environmental assessment allows proponents to identify and take into account any environmental considerations early in the planning process. By its nature, strategic assessment is best applied at a broad regional or State level to assess the impact of policies, plans and programs, rather than at the level of specific projects, and is therefore best undertaken by government. This process allows for environmental assessments to be undertaken at the early stages which can influence subsequent project designs that lead to major public works. The use of strategic environmental assessment at the State level would provide a level of accountability and transparency that is of increasing importance as more and more large public projects are being both proposed and assessed by the State. Significant examples of policies, plans and programs where strategic assessment would have benefited the environmental outcomes of subsequent projects include: (1) the Victorian Transport Plan and (2) Our Water, Our Future.

## Issue 2: Consideration of the 'no project' scenario is not addressed in current EES Process

- It is an acknowledged principle of good environmental impact assessment that the proposed project be considered in comparison to alternatives. The extent of this consideration is not fixed, neither in principle nor in legislation. Alternatives which offer only a partial solution to the problem must be addressed, and the assessment must contain a reasonably thorough discussion of the significant aspects of the probable environmental consequences of all alternatives, including consideration of the "no project" alternative. This no-project scenario should be considered as part of the strategic risk assessment process.

### Recommendation:

1. *Victorian Government to implement requirements for Strategic Impact Assessment for significant public works associated with broader policies and plans for infrastructure development*

## 6. Consultation (community and industry)

### Issue 1: The Guidelines do not provide detail or information on the process for public consultation

- The process of public consultation can risk becoming quite (unnecessarily) elaborate for the sake of it. Conversely, without any guidance, some proponents undertake very little consultation, or consultation which increases the risk of poor public perception e.g. through a public meeting rather than an walk-in information session. Very little guidance exists to steer developers towards 'best-practice' methods of public consultation. Many proponents still believe that the public meeting is the best way to deliver information. In most cases, this is not the case. The EIANZ notes that the International Association of Public Participation (IAP2) could be asked to provide further guidance on community consultation to supplement guidance provided to proponents. The IAP2 have already provided similar guidance to the Victorian EPA.

### Issue 2: Opportunity to address public concerns at an earlier stage, avoiding delays at the Public Hearing

- By the time an EES goes to public hearing, many individuals and organisations have formed a strong (often negative) view of a project. The public hearing process often serves to satisfy many of the initial objectors. The EIANZ believe that many of these concerns could have been addressed at an earlier stage in the process. This situation is amplified by the fact that many of the staff in DPCD involved on a project are seen to be "invisible" during the EES process, which often results in individuals holding off on their enquiries until the panel hearing. The EIANZ have considered whether or not a return to DPCD facilitation of an independent community representative body could minimise the number of submissions and reliance on panel?
- It is also noted that the introduction of a community panel (Community Liaison Group) was unsuccessful in the past. This was believed to be because the group consisted of government agency and community representatives, some of whom would be unofficial representatives of other groups looking to stall the process.
- The EIANZ maintain that we are in need of a public forum facilitated by an independent body, focussing on the interests of the private proponent and the community.

Recommendations:

1. *Consider introduction of a public forum for discussion of project issues, prior to the public hearing. This would need to be independently facilitated.*



## Appendix A



**Survey Results**

# Survey Results

## Section 1: Introduction

Members of the EIANZ were invited to participate in an online survey, conducted using the online questionnaire site, SurveyMonkey. Participants were asked to strongly agree, agree, disagree, strongly disagree or state that they were unsure for 11 questions and give open ended responses for 5 questions. Thirty-one of the 309 EIANZ members responded to the survey, giving a response level of 10%.

Based on the survey responses, majority of respondents agreed that:

- Better environmental outcomes could be achieved more quickly and with a reduction in unnecessary costs,
- The EES process should be more transparent,
- The EES process in Victoria results in unnecessary delays for proponents,
- The time frame for public consultation is sufficient, although the process itself may lack adequacy and
- The independence of the EES assessment is not maintained when the government is the proponent.

### Respondent information

- 26 of the 31 respondents had experience working with the Victorian EES process.
- Nineteen of the thirty-one respondents had worked on an environmental effects statement for another state
- Collectively, the group's environmental effects statement experience covered all states of Australia.
- Ways in which respondents were involved in the EES Process:

Involvement	Number	Percentage
Proponent	2	6%
Consultant Preparing EES	21	68%
Other	8	26%

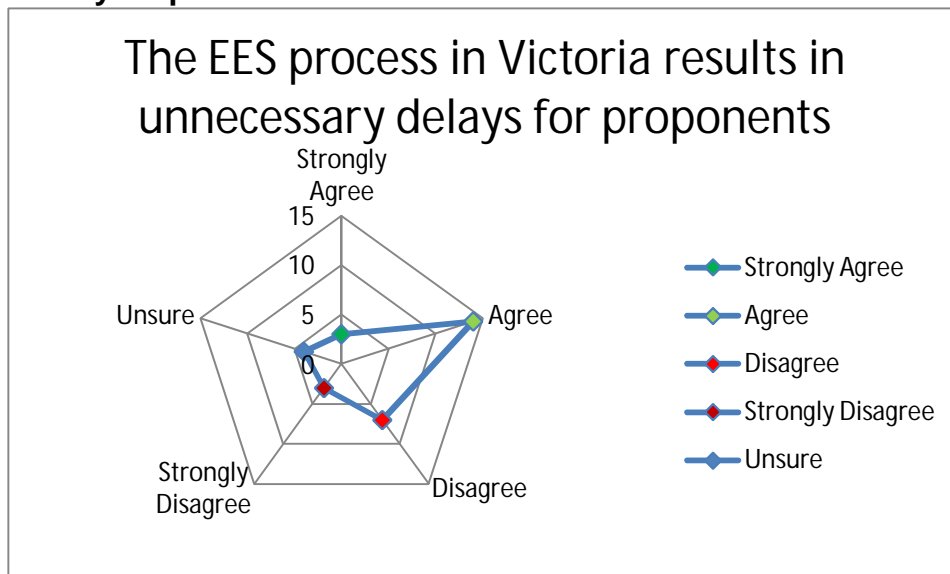
## Section 2: Key Findings

A full list of the survey questions is available under Section 3. Survey results are summarised in accordance with the Terms of Reference.

### **Term of Reference 1: weaknesses in the current system including poor environmental outcomes, excessive costs and unnecessary delays encountered through the process and its mechanisms**

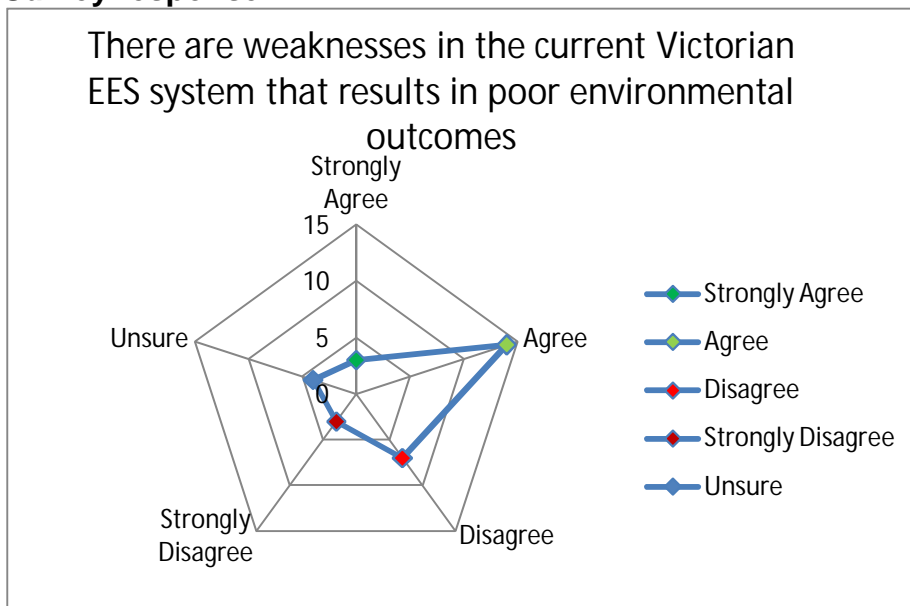
**Survey statement:** “The EES process in Victoria results in unnecessary delays for proponents”

**Survey response:**



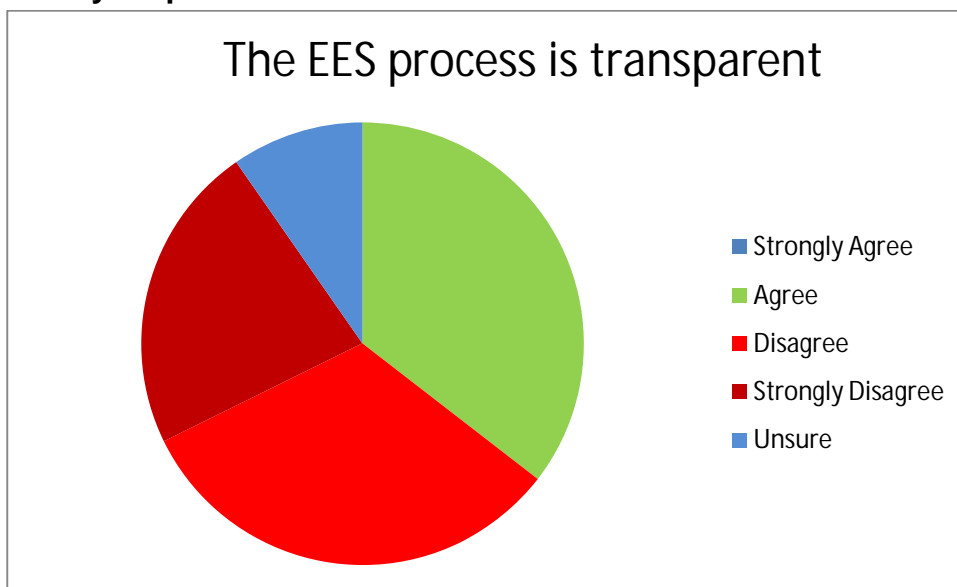
**Survey statement:** “There are weaknesses in the current Victorian EES system that results in poor environmental outcomes”

**Survey response:**



**Survey statement:** “The EES process is transparent”

**Survey response:**



**Survey comments related to Term of Reference 1**

“Very poor at strategic environmental assessment and evaluation of the cumulative impact of a number of similar projects”



“Need better assessment of cumulative impacts. Need much better follow up of implementation and effectiveness of EES commitments and Ministers requirements.”

“Review and oversight controls inadequate to protect against bias and manipulation. No strong requirements for individual responsibility for providing correct information and advice.”

“EES's when triggered involve significant costs and time delays...”

“No enforcement of best practices for EclA and no enforcement of monitoring to determine biological outcomes.”

“A more thorough, timely and transparent process for determining if an EES is required”

“The main source of delays in the Vic EES process are slow agency response times (usually because of under-resourcing) and for political reasons (slow decision making by Minister). Costs are inflated by lack of focus on key issues, with all issues being addressed at considerable cost.”

“The independence of the process is somewhat flawed - having the government make the independent assessment, despite advocating a 'growth and development' makes their position somewhat controversial. Having an independent body - such as the office of the 'Commissioner for the Environment' responsible for the Screening, Scoping and Review process would be far better - this could also allow for greater public engagement in terms of scoping the EIA boundaries.”

“Inadequate scoping, overly prescriptive conditions, lack of competence in DSE to monitor, no SEA”

“The 20 business day target for a referral is not a statutory timeframe and proponents have no right to appeal (even the right to appeal failure to notify would assist in speeding up the process).”

“EESs directed after Government decision made to proceed with project”

“The acceptable standards for marine ecological IA are abysmal. Hopefully the EIANZ drafted guidelines will improve this. At present, the expectations for EES are for highly sophisticated and complex modelling of physical impact effects, such as outfall or dredge plumes. There is a complete disjunct in that the equivalent for the ecological impact assessment side is not expected and actually discouraged. Instead, there is pressure to dumb the biology down to a level that is completely meaningless. Is this deliberate to ensure no impediment to development and minimise environmental management expenditure during a project? Of course it is - it a responsibility of a proponent, Government or otherwise to do this. This is a good argument for separating the EES preparation from any proponent.”

“Overall, there are significant limitations to the EIA process, particularly when projects are by-passed on the pre-text of being 'Projects of State Significance'. This mechanism was designed to explicitly circumnavigate the EIA process, thus rendering the decision-making process a 'black hole' with little accountability and transparency. “

“Proponents should not be given advice that an EES is needed when a project is clearly contrary to State Government policy. They can then go ahead and do the studies and try to use this as a lever to get undesirable projects approved.”

“...the ability for the Minister to override recommendations of the EES review officers and independent review committees detracts from my confidence in the system.”

“The independence of the process is somewhat flawed - having the government make the independent assessment, despite advocating a 'growth and development' makes their position somewhat controversial. Having an independent body - such as the office of the 'Commissioner for the Environment' responsible for the Screening, Scoping and Review process would be far better - this could also allow for greater public engagement in terms of scoping the EIA boundaries.”

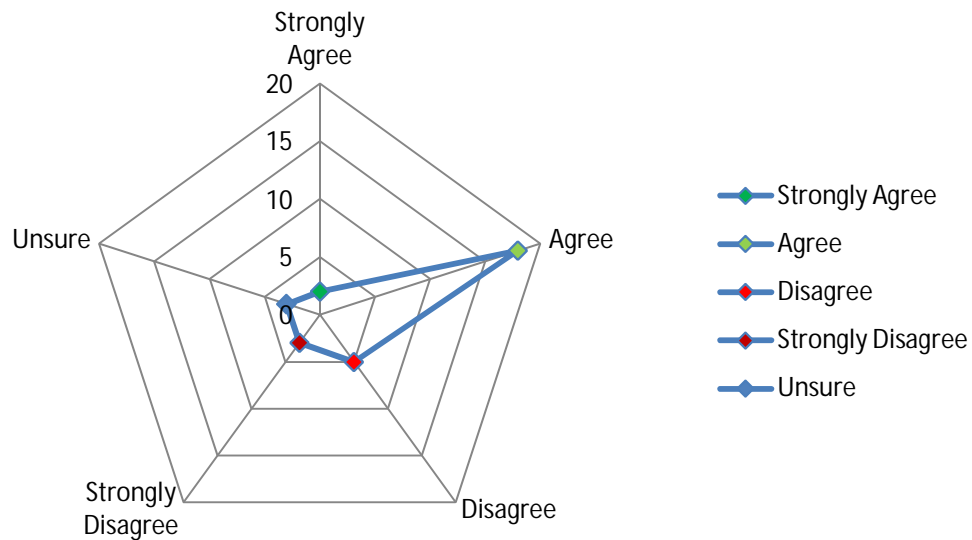
“Should proponents be allowed to choose their consultant? This question must be asked”

## **Term of Reference 2: Community and industry consultation under the Act**

**Survey statement 3:** “Time frames for public consultation are adequate under the current system”

**Survey response:**

## Time frames for public consultation are adequate under the current system



### Survey comments related to Term of Reference 2

A weakness is that there is “limited input from public to counter advocacy and bias of proponent at hearing. No means of separating advocates from independent science sources in EES documentation and at hearings. No rights of review and lack of processes to counter major errors by Independent Expert Groups and Panel Reports.”

“Combative nature of panel consultations”

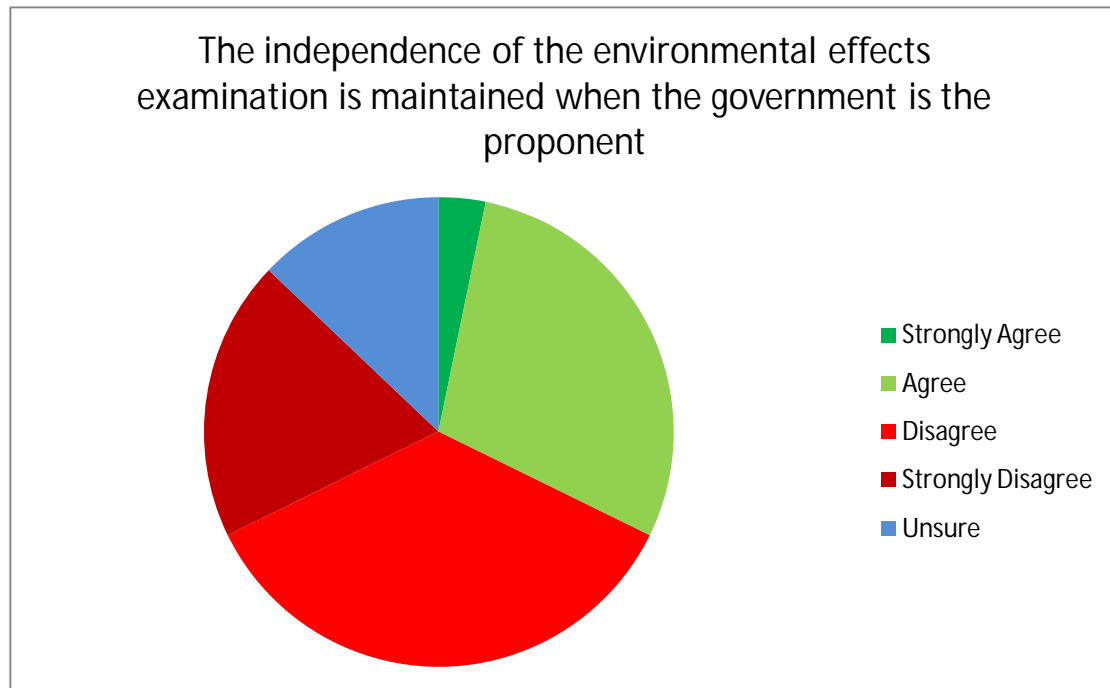
“It seems a comprehensive process with a thorough framework for consultation. However the ability for the Minister to override recommendations of the EES review officers and independent review committees detracts from my confidence in the system.”

“The public involvement aspect can be improved, but making scoping a far more engaging process - and although this was undertaken with the public for the Desal plant, again the communication process is flawed as there was little information reflecting how community comments were incorporated into the process... if this continues, there is no wonder you end up with disenfranchised community members unwilling to bother to contribute. Govt actions (fixed decision-making, limited consultation, lack of transparency) also promote a rather cynical (apathetic) attitude amongst community members”

### **Term of Reference 3: The independence of environmental effects examination when government is the proponent**

**Survey question:** “The independence of the environmental effects examination is maintained when the government is the proponent”

**Survey response:**



### **Survey comments related to Term of Reference 3**

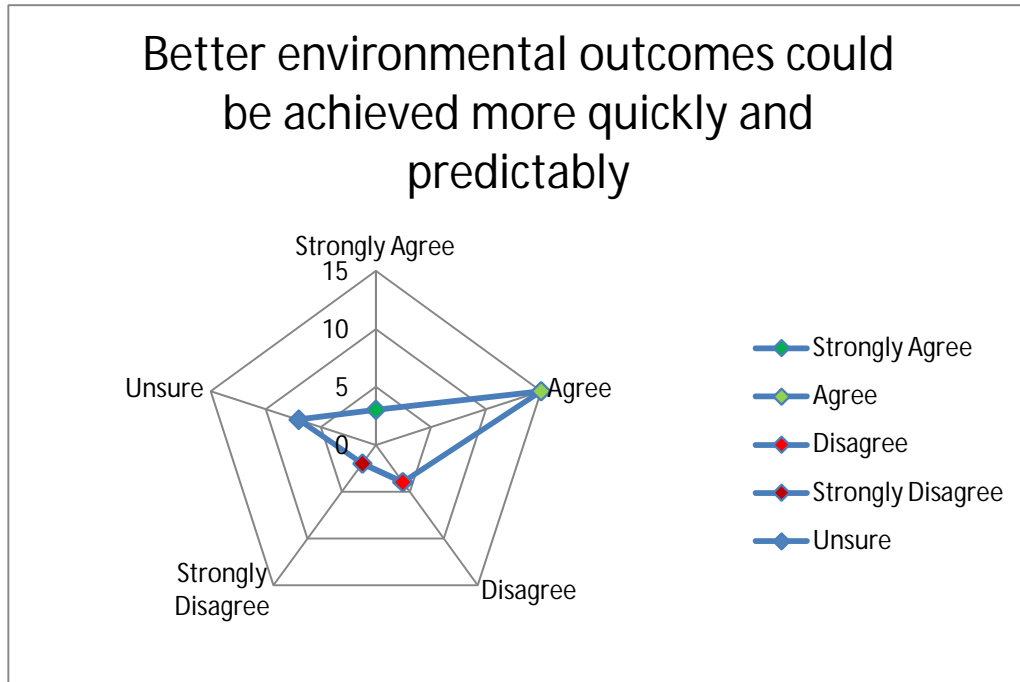
“(The) proponent decides to do (the EES); government often in a joint venture so they are the decision-maker on a project of which they have ownership”.

“EES process takes considerably longer for private proponents than for government projects.”

### **Term of Reference 4: How better environmental outcomes can be achieved more quickly and predictably and with a reduction in unnecessary costs**

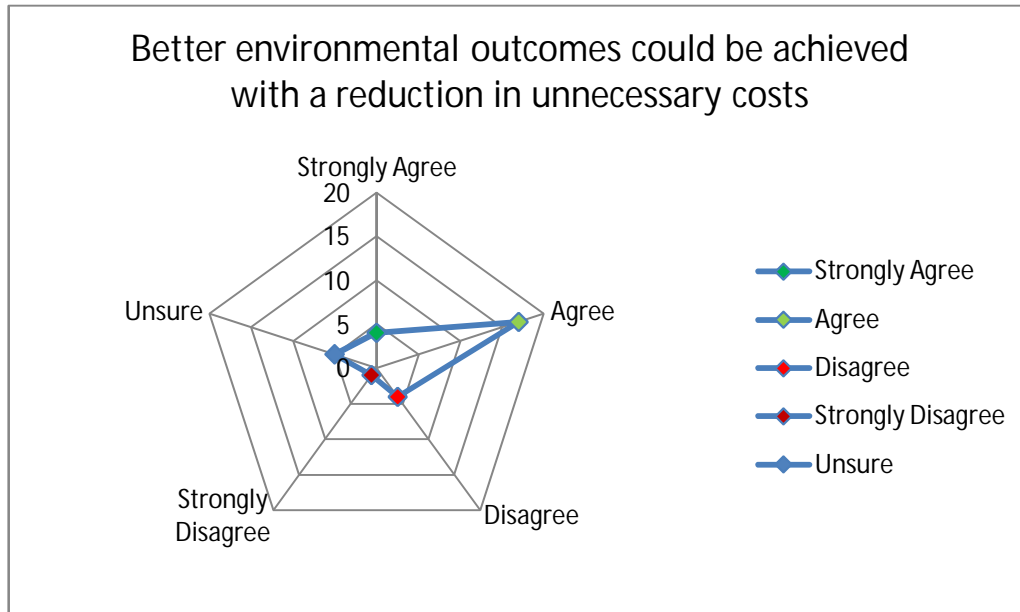
**Survey Question:** “Better environmental outcomes could be achieved more quickly and predictably”

**Survey Response:**



**Survey Question:** Better environmental outcomes could be achieved with a reduction in unnecessary costs

**Survey Response:**



#### **Survey comments related to Term of Reference 4**

“Scientific information produced could better contribute to body of knowledge. The Port Phillip Bay Environmental Study was not undertaken under the EES legislation, but had similar objectives.”

“More projects should really have a formalised process for assessing multi-disciplined environmental assessments. Projects that do not trigger EES provisions however have to go through the referral system. Proponents may feel that this is "wasted / dead" time.”

“Independent trigger process can be advantageous”

“A cut down version is needed for smaller projects”

“Process is too generic, need to be more tailored to specific projects.”

“The EES process should be designed so that it is rigorous and genuine, taking systems based approach. It should be a requirement of ALL new developments and events (such as the Commonwealth Games which I understand did not have an EES carried out), and it should be a process that takes as long as is required to be an effective and accurate assessment, regardless of the cost for the proponent. Having said this, there should not be unnecessary costs incurred by bureaucratic processes that do not add anything meaningful to the actual EES.”

“Most EES referrals will also require an EPBC referral, the format of the EES should be changed to incorporate the EES and the EPBC in the one document that can be used for both purposes, under the bilateral agreement.”

## How could better environmental outcomes be achieved? (Open-ended response)

### **More use of strategic environmental assessment / indirect impacts**

- More strategic EIA undertaken by government for policies, plans and programs;
- More consideration required of cumulative and indirect impacts (e.g. climate change, and GHGs, respectively).
- Adoption of Strategic Environmental Assessment processes e.g. those under the EPBC as used for evaluation of native veg issues in the proposed new growth areas for Melbourne. Also, EESs are sometimes required for small scale projects, due to a lack of community consultation mechanisms under other legislation, e.g. the Coastal Management Act.
- Explicit incorporation of alternatives in the scoping document prior to assessment processes
- Greater embedded strategic environmental assessment, rather than a continuing ad-hoc planning basis –
- If more long-term perspectives were taken into account and systems thinking used, and by ensuring that an EES is actually done for all developments.
- Also the inclusion of cumulative and indirect effects in the assessment process. This can be justified through the EPBC Act where the Nathan Dam case highlighted the need to change the act (and it was) to reflect the cumulative/indirect impacts of the dam downstream (on the Great Barrier Reef).
- Improved transparency and greater consideration of project options rather than the current practice of cursory examination of alternatives and detailed assessment of the preferred option. Particularly when environmental and social values (not just economic values) were the starting point for project planning

### **Scope and risk assessment**

- Better mediation. More focus on 'real' issues as opposed to 'nth degree' technical detail that confuses community. Much simpler guidance around Flora and fauna protection requirements.
- A preliminary step to better identify the real issues, then focus on these.
- Have a tiered approach for projects. Projects with little environmental impact could go through a fast tracked process rather than a full EES. Full EES only required for large scale projects or those with significant environmental impact.
- Clearer and more comprehensive guidelines for particular development types
- Tailoring the level of detail in the assessment better to the scale of the development
- If there could be more emphasis, time and resources allocated to mitigating environmental impact, this would be more beneficial than spending large amounts of time and money on studying the potential

impacts in too much detail for practical purposes. Risk assessment and risk management could be given a more prominent role to assist with limiting the extent required of impact assessment and identify where mitigation measures are most important

- Most EESs are poorly focussed with resources spread over all issues, with little account of the relative weight of issues. Would prefer to see a system that puts effort early on into narrowing the focus to the agreed key issues, but then putting the necessary resources into these areas. Other areas would need to be still covered to ensure that original focus was correct, but with fewer resources allocated to their study unless subsequently shown to be needed
- A more formalised process for assessing environmental impacts not triggering EES (similar to Major Facilitation Bill process)
- Better buy-in by the Agencies during the assessment process ie. no delegation at TRG meetings - the people who make the decisions should be attending. The TRG's cost the proponents a lot of money to run and they are important information gathering and feedback mechanisms. Too often issues of importance are not raised early enough. Sometimes issues are brought up in the Panel that could have been resolved much earlier in the process. However, the differential between the timeliness of each step of the approvals process for private proponents (vs government) is my main concern.
- More transparency and debate around the research and modelling on which guidelines are developed

### **Relationship to other processes**

- Kill the Environment Effects Act and expand the Planning and Environment Act to deal with 'environmental significant projects' in a system that considers the appropriateness of the land use along with environmental impacts (opposed to using the EE Act that has no approval mechanism). This will also allow for appeals, statutory timeframes and a more transparent system.
- Clarification of trigger mechanisms; introduction of a range of assessment requirements that clearly relate to environmental significance. Some elements of the EPBC Act could be investigated
- A project should be able to override the native vegetation framework and other policies where a better environmental outcome can be achieved by a project. Proponents are more likely to have better environmental outcomes throughout a project if the upfront cost of getting approvals are lower, streamline this process and better environmental outcomes will be achieved.



### **Post-assessment monitoring and auditing**

- Mandating on-going monitoring and evaluation - while EESs should ideally cover the monitoring program - there needs to be regular follow up and data interpretation to ensure that all things are as expected and that nothing unexpected has occurred. Monitoring of impacts is a significant limitation of the entire EIA process - clear requirements as to responsibility need to be established. Furthermore, monitoring could be easily tied to its explicit environmental management of the site in question - thus the EES could become a management tool, rather than a planning activity...

### **Consultation**

- Better consultation and decision making process with environmental groups and experts' opinion actually being taken into account - if development MUST proceed then greater conditions should be placed on industry to achieve environmentally appropriate outcomes.
- Set timeframes, clear community and authority involvement, progress reporting, no spin.
- Community consultation should be more inclusive and involve vulnerable groups.

### **Knowledge base**

- Government should invest in maintaining and improving knowledge of base conditions, e.g. for marine systems, we know hardly anything to support EIA and studies for EESs are extremely time limited. There is a desperate need for a major increase on ongoing field studies to provide basic information for managing natural resources, not just for fisheries.
- Sign-off of documentation by a Certified Environmental Practitioner.
- Improved training of consultants, better resourcing (numbers of staff and capacity) of Govt. Dept to deal with assessing large projects.


## Section 3: Raw Data

	Strongly Agree		Agree		Unsure		Disagree		Strongly Disagree	
	No.	%	No.	%	No.	%	No.	%	No.	%
There are weaknesses in the current Victorian EES system that result in poor environmental outcome	9	29 %	14	45 %	1	3%	5	16%	2	6%
The EES process in Victoria results in excessive costs for proponents	4	13 %	9	29%	5	16%	9	29%	4	13%
The EES process in Victoria results in unnecessary delays for proponents	3	10 %	14	45 %	4	13%	7	23%	3	10%
There is adequate industry consultation in Victoria's EES process	0	0%	13	42 %	7	23%	9	29%	2	6%
There is adequate community consultation in Victoria's EES process	2	6%	15	48 %	0	0%	10	32%	4	13%
Time frames for public consultation are adequate under the current system	2	6%	18	58 %	3	10%	5	16%	3	10%
Access to EES documentation is appropriate for community stakeholders	2	6%	14	45 %	1	3%	12	39%	2	6%
The EES Process is Transparent	0	0%	11	35 %	3	10%	10	32%	7	23%
The independence of the environmental effects examination is maintained when the government is the proponent	1	3%	9	29 %	4	13%	11	35%	6	19%
Better environmental outcomes could be achieved more quickly and predictably	3	10 %	15	48 %	7	23%	4	13%	2	6%
Better environmental outcomes could be achieved with a reduction in unnecessary costs	4	13 %	17	55 %	5	16%	4	13%	1	3%

## Appendix B

### Submission Contributors and Project Experience

(to be provided at the hearing)

A decorative graphic on the left side of the page. It features a light blue gear with a white center, partially overlapping a light green leaf with a white vein. The gear and leaf are stylized and semi-transparent.