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