

14 July 2025

Ms Patricia O'Callaghan
Director General
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Innovation
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Environment Institute
of Australia and
New Zealand Inc.

By email: [REDACTED]

Dear Ms O'Callaghan

Subject: *EP Act 1994* - Realising Efficiencies and Streamlining – Consultation Paper

Thank you for the opportunity to provide comments on the efficiency and streamlining review of the *Environment Protection Act 1994 (EP Act 1994)*.

The Environment Institute of Australia and New Zealand (EIANZ) is Australasia's leading professional body for environmental practitioners who work in government, industry, and community organisations applying the laws and policies of government's related to environmental protection and nature conservation. EIANZ would be pleased to be actively involved in the further development of the proposed amendments to the *EP Act 1994*.

The need to administer regulation and deliver regulatory outcomes in an efficient and effective manner is seen as a key obligation by environmental professionals. Many of the proposals contained within the Consultation Paper are clearly aimed at improving efficiency and reducing overlap and inconsistency, and are supported by EIANZ.

EIANZ supports the use of tools such as mandatory codes and best practice environmental management codes, provided they are prepared by experienced environmental professionals and contain clear, unambiguous requirements, that are capable of achieving effective compliance and enforceable.

However, EIANZ has concerns that some of the proposals represent an erosion of regulatory oversight. While regulatory oversight should be proportionate to the environmental risk of activities, EIANZ considers that the overall aim of improving efficiency can be achieved without eroding checks and balances such as the issuing of Environmental Authorities for environmentally relevant activities.

EIANZ's concerns are explained in more detail in the attached response to the Consultation Paper.

EIANZ strongly disagrees with removing the need for public consultation at the Terms of Reference stage of an environmental impact assessment (EIA). EIANZ considers that this step will increase rather than reduce the potential for delays in the EIA process, particularly because early opportunities to understand and address stakeholder concerns will be lost.

EIANZ's comments are made in the broader context of downward trends in biodiversity indicators, the ecological health of the Great Barrier Reef, and the general pressures of landuse and development on environmental values, together with implementing solutions to the environmental consequences of anthropogenic global warming and associated climate change.

EIANZ's SEQ Division would be pleased to meet with you and your officers to contribute to the further development of these proposals. The Department is encouraged to tap into the pool of expertise available through the EIANZ fellows and Certified Environmental Practitioners (CEnvPs). The Division can be contacted at seq@eianz.org.

Yours sincerely



Geraldine Squires FEIANZ CEnvP-IA
President SEQ Division

EP Act 1994 – Efficiency and Streamlining Review

EIANZ Comments

Section # and Proposal	Response/Feedback
PART 1. EP Act Proposals	
Proposal 1.1 Mandatory Codes	<ol style="list-style-type: none">1. EIANZ supports the general idea of mandatory codes for environmentally relevant activities that have been assessed as presenting a low environment risk, and would be pleased to be actively involved in the development of such codes.2. EIANZ does not support the proposal to remove the requirement to hold an EA for an activity that is subject to a mandatory code. EIANZ considers that this proposal removes regulatory oversight and significantly weakens the regulatory framework for protecting the environment.3. Knowing what, where, and by whom ERAs are being undertaken is crucial to ensuring compliance with the mandatory codes, the GED, and assuring environmental protection.4. EIANZ accepts that compliance with the requirements of a mandatory code would constitute compliance with the aspects of the GED covered by the code. EIANZ notes that Compliance with the requirements of a mandatory code must not exempt an operator from compliance with the GED with respect to non-ERA activities conducted on a site.5. EIANZ recommends that mandatory codes not be used where there is more than one ERA conducted at a site. Such sites ought to be subject to assessment and approval through a bespoke EA. For the purposes of simplifying conditioning, a bespoke EA could reference compliance with one or more mandatory codes as a condition.6. While the proposal to establish a register would provide some transparency as to who is operating under a mandatory code, registering is not the same as seeking approval.7. EIANZ suggests that the requirement for operators to seek approval to conduct an ERA be retained, noting that a system already exists for standard applications which essentially waves through low risk ERAs.8. EIANZ suggests that rather than remove the requirement to hold an EA for a low risk ERA, the EA be issued as a simple notice of approval subject to compliance with the relevant mandatory code. This would obviate the need for a register, and avoid the risks that come with self-assessment.

	<p>9. Retaining EAs would allow bespoke conditions to be applied where compliance checks indicate that this is necessary.</p> <p>10. Retaining EAs would allow the existing system for enforcement and compliance to be applied, rather than having to introduce a new system for mandatory codes. EIANZ supports the scheduling of mandatory codes in the EP Regulation.</p> <p>11. EIANZ supports remaking of mandatory codes every 7 years. EIANZ questions how the government will ensure that at the time that a mandatory code is remade, the operators relying on that code are in compliance with its contemporary standards, and if they are not what will be the consequences?</p> <p>12. Example 1.1 - EIANZ is very concerned at the proposal to remove the requirement for small scale mining and other low-risk extraction activities for gemstones to contribute financial assurance. Small scale mining activities are a considerable source of friction between miners and landowners because of biosecurity risks and failure to reasonably rehabilitate disturbed areas of land. Removal of this requirement will likely leave the landowner and the government to carry the cost of residual environmental harm,</p>
<p>Proposal 1.2 Consistent Environmental Risk Basis</p>	<p>13. EIANZ supports the risk based approach to the regulation of activities that have the potential to cause environmental harm provided that it is backed by regular checks to validate the risk assessment.</p> <p>14. EIANZ suggests that there ought to be a periodic (every five (5) years) public review of the regulated low-risk ERAs with a view to ensuring that there is consistency in the environmental regulation of activities that have the potential to cause environmental harm. The list of ERAs must remain open to variation with new knowledge of environmental consequences and the emergence of new technologies and activities.</p> <p>15. EIANZ is concerned that there will be situations where an activity that may generally present low risk ought to have a higher risk profile because of proximity to environmentally sensitive features or sensitive community resources. Retaining of EAs as suggested in response to 1.1 would allow site specific conditions to be applied where necessary.</p> <p>16. EIANZ is also concerned that there is limited understanding of the effectiveness of some of the standard mitigation measures, such as erosion and sediment control, and more research on this might be required before it can be determined that a mandatory code sufficiently reduces the environmental risk.</p>

	<p>17. EIANZ notes that while an individual activity may be assessed as low risk, the cumulative impacts of a number of low-risk activities proximal to each other will increase the risk. Provided that EAs are retained, the regulatory authority will be able to apply more stringent standards, or even refuse new entrants where cumulative impacts are not low-risk.</p> <p>18. EIANZ supports the consistent prescribing of all ERAs in the EP Regulation.</p> <p>19. EIANZ would be pleased to be actively involved in the regular risk analysis and review of environmentally relevant activities.</p>
<p>Proposal 1.3 State Priorities for Environmental Protection</p>	<p>20. EIANZ supports in principle the inclusion in the <i>EP Act</i> of a set of State Environmental Protection Priorities.</p> <p>21. EIANZ would prefer the retention of the nomenclature Matters of State Environmental Significance so as to align with the national nomenclature of Matters of National Environmental Significance.</p> <p>22. The proposed nomenclature of State Environmental Protection Priorities suggests the potential for shifting priorities and a lack of attention in the assessment and oversight of activities to matters that are not a priority.</p> <p>23. EIANZ would expect this list to, as a minimum, contain all of the environmental values currently specified as matters of state environmental significance and environmentally sensitive areas.</p> <p>24. EIANZ does not agree with SEPPs (Matters of State Environmental Significance) being a subset of an environmental value. They are a list of matters significant at the state level that shape the administrative focus of the <i>EP Act</i>.</p> <p>25. EIANZ supports the proposal to amend the <i>EP Act</i> to provide that its administration have regard to SEPPs (Matters of State Environmental Significance). In saying that EIANZ expresses the view that the listing of matters ought to be concise rather than expansive as in the indicative list.</p> <p>26. EIANZ notes with some concern that in the indicative list of matters that would be included as SEPPs (Matters of State Environmental Significance), cultural heritage places, prime agricultural land, water storage, treatment, and distribution, and waste management services are not regarded as priorities to be addressed in the administration of the <i>EP Act</i>.</p> <p>27. EIANZ believes that in proposing the listing of SEPPs (Matters of State Environmental Significance), the concept of environmental values (characteristics of the environment) has become confused with broad matters that are the focus for regulatory activity aimed at protecting or managing the environment.</p>

<p>Proposal 1.4 Codification of Best Practice Environmental Management (BPEM)</p>	<p>28. EIANZ supports the proposal to amend <i>EP Act</i> s551 to allow for BPEM codes of practice to state what is best practice environmental management in relation to an activity and/or ways of achieving compliance with the GED for an activity.</p> <p>29. EIANZ is concerned that there will likely be confusion regarding the role of mandatory codes versus BPEM codes and suggests that the role and application of each be clearly set out.</p> <p>30. Noting the requirement (<i>EP Act</i> s21) for BPEM to be referenced against measures used nationally and internationally, EIANZ would be concerned were BPEM codes to set a low bar for compliance. It would be unfortunate if the BPEM codes allowed operators to simply meet a bare minimum standard rather than driving best practice and continual improvement.</p> <p>31. EIANZ suggests that BPEM codes will have limited use and difficulty in demonstrating compliance unless the codes define best practice quite prescriptively.</p> <p>32. EIANZ would be pleased to be actively involved in the development of the BPEM codes.</p>
<p>Proposal 1.5 Consistent Administrative Requirements</p>	<p>33. EIANZ supports the proposal to bring consistency to the administrative conditions that are applied to regulatory documents.</p> <p>34. In order to facilitate the improvement and standardisation of administrative processes associated with the matters covered by administrative conditions, EIANZ suggests that the <i>EP Act</i> be amended to allow the consistent administrative conditions to be automatically applied to current <i>EP Act</i> authorities.</p> <p>35. EIANZ considers such an approach acceptable given that these conditions are simply an expression of administrative processes to be followed by an operator. This approach will importantly allow the administering authority to align its internal processes to more efficiently mirror these requirements.</p>
<p>PART 2. PRCP Proposals</p>	
<p>Proposal 2.1 PRCP Transitioning Arrangements</p>	<p>36. EIANZ supports the clarification of offence provisions to ensure that rehabilitation and environmental management can continue when there is not an approved PRCP.</p>
<p>Proposal 2.1 PRCP Transitioning Arrangements</p>	<p>37. EIANZ supports the proposal to provide grounds for issuing an Environmental Enforcement Order where there is an alleged offence in relation to <i>EP Act</i> s431A.</p>

Proposal 2.1 PRCP Transitioning Arrangements	38. EIANZ supports the proposal to enable the administering authority to issue a rehabilitation direction requiring specific activities to be undertaken.
Proposal 2.2 When Offence Provisions Apply	39. EIANZ supports this proposal.
Proposal 2.3 New Category of Approval	40. EIANZ understands the need not to increase the rehabilitation burden on operators. 41. EIANZ would however prefer to see all land rehabilitated to a condition where no ongoing management is required and thus submits that management post mining land use areas, and indeed non-use managed areas be allowed only in the strictest of circumstances, and not simply where an operator argues that it is not cost-effective to rehabilitate the area to a safe, stable and non-polluting condition.
Proposal 2.4 Audits of PRCP Schedules	42. EIANZ understands the need to minimise regulatory and administrative burden around auditing of rehabilitation progress. 43. EIANZ is however concerned about the slow progress of rehabilitation as documented in the Office of the Mine Rehabilitation Coordinator's annual report for 23/24. 44. EIANZ suggests that the three yearly audit be retained, noting that where the PCRPP did not require any rehabilitation in that three year period, the audit can be achieved through a simple statement that "no action was required".
Proposal 2.5 Notice to Submit a PRCP Application	45. EIANZ understands that when an EA is transferred to a new operator, this can cause delays in completing certain compliance requirements. 46. EIANZ would however prefer not to see any 'reset' of PCRPP time frames given the generally slow progress of rehabilitation, and that the current operator may simply be transferring the rehabilitation obligation to an operator with less capacity to meet the obligation. 47. EIANZ also notes that this provision may provide a disincentive to operators considering sale to complete a PCRPP, with concomitant delays in rehabilitation works.
Proposal 2.6 Removal of Public Interest Evaluation Process	48. EIANZ strongly supports consideration of the public interest in any decision-making under the EP Act. 49. The rationale for removing the requirement for the applicant to demonstrate why it is not in the public interest for land to be rehabilitated to a stable condition (EP Act s126D (2)(b)(ii)) is that it is covered by the requirements of the standard criteria.

	<p>50. EIANZ considers that the provision of these mechanisms is being confused. EP Act s126D sets out the obligations of the applicant in preparing a PRCP to justify its proposed rehabilitation actions with regard to the public interest. The standard criteria set out the considerations that the administering authority must have regard to in deciding an application. The two are not the same.</p> <p>51. EIANZ suggests that in order for the administering authority to consider the public interest in deciding an application, it will need to seek from the applicant the information that would be provided in relation to the requirements of EP Act s126D.</p> <p>52. EIANZ considers that it is a matter of primacy that the applicant for a PRCP that will see land not rehabilitated to a stable condition ought to clearly demonstrate the analysis that such an outcome is in the public interest in its application documentation. Without that information the administering authority cannot effectively consider the standard criteria in its decision making.</p>
Proposal 2.7 Lapsed PRCP Applications	53. EIANZ supports this proposal
PART 3. Other Proposals	
Proposal 3.1 Definition of Waters	54. EIANZ supports the proposal to put beyond doubt in the EP Act that the term waters includes groundwaters.
Proposal 3.2 Power to Order Forfeiture of Property	55. EIANZ supports the proposal to provide that on conviction, a court may order the forfeiture of vehicles, plant, and equipment used in the commission of an offence under the EP Act.
Proposal 3.3 Power to Confiscate the Proceeds of Environmental Crimes	56. EIANZ supports the proposal to amend the Criminal Proceeds Confiscation Regulation 2023 to include EP Act offences as confiscation offences.
Proposal 3.4 Time to Gather Evidence	57. EIANZ supports the proposal to extend the timeframes for commencing proceedings under the EP Act and making the provisions of the Waste Reduction and Recycling Act consistent.
Proposal 3.5 Residual Risk Requirement Lapses	<p>58. EIANZ supports the proposal to clarify when a residual risk requirement lapses.</p> <p>59. EIANZ notes that if EAs are retained rather than replaced with mandatory codes, this strengthens the ability for the Department to require residual risk to be adequately addressed at completion of an ERA.</p>

Proposal 3.6 Information Stage Not Shortened	60. EIANZ supports the proposal to ensure that the period of the information stage for an application is not shortened by the submission of a notice of change.
Proposal 3.7 Third Party Accreditation Programs	61. EIANZ has no comments on this proposal.
Proposal 3.8 Public Notification of EIS Terms of Reference	<p>62. EIANZ strongly disagrees with the removal of this important step in the preparation of an EIS. This proposal is not a simple streamlining to gain efficiencies, but a major change to the EIS process, and the removal of the opportunity for the public to be engaged in determining the scope of matters to be considered in preparing an EIS.</p> <p>63. The proposed course of action is contrary to the objective of community involvement in the administration of the act set out in EP Act s6.</p> <p>64. Removal of consultation on terms of reference is also counter to the internationally recognised principles of public participation in EIA that those affected by a proposal should have access via an open and transparent process to express their concerns about a proposal and have their issues considered and potentially resolved.</p> <p>65. Public notification of Terms of Reference begins the facilitation of a process of consultation with stakeholders regarding their concerns about a proposal and its impacts.</p> <p>66. EIA practitioners welcome the information that comes from this early engagement as it helps to anticipate and address issues of concern to stakeholders in EIA studies and reports. Importantly, this early engagement can significantly reduce delays later in the EIA process, not least because addressing stakeholder concerns in a proactive manner reduces the volume of comments and number of overall objections on the final EIA Reports.</p> <p>67. The original obligation on the proponent of a project to submit for approval draft terms of reference for the EIS after consultation with stakeholders has already been eroded by use of a generic terms of reference published by the chief executive. This results in a proponent's resources being devoted to everything, rather than to a</p>

	<p>scope of investigations, analysis, and synthesis that suits a particular activity and its location.</p> <p>68. In EIANZ's view both proponents and the administering authority have lost sight of the efficiency and cost savings to be gained in the EIS process through bespoke scoping. The opportunity for public input at the scoping stage allows early identification and investigation of matters of concern to communities affected by a project, before they become costly issues requiring conflict resolution.</p>
<p>Proposal 3.9 Consistency in Authorised Officer Functions between <i>EP Act</i> and Planning Act</p>	<p>69. EIANZ has no comments on this proposal</p>
<p>Proposal 3.10 Definition of Protected Area</p>	<p>70. EIANZ has no comments on this proposal</p>
<p>Proposal 3.11 Water Act Clarification</p>	<p>71. EIANZ has no comments on this proposal</p>