

Reducing Green Tape or Rolling back IA in Australia: What are four jurisdiction up to?

Author

Middle, Garry, Clarke, Beverly, Franks, Daniel, Brown, Lex, Kellett, Jon, Lockie, Stewart, Morrison-Saunders, Angus, Pope, Jenny, Glasson, John, Harris, Elizabeth, Harris-Roxas, Ben

Published

2013

Conference Title

33rd Annual Conference of the International Association for Impact Assessment

Rights statement

© The Author(s) 2013. The attached file is posted here with permission of the copyright owners for your personal use only. No further distribution permitted. For information about this conference please refer to the publisher's website or contact the authors.

Downloaded from

<http://hdl.handle.net/10072/58748>

Link to published version

<https://conferences.iaia.org/2013/>

Griffith Research Online

<https://research-repository.griffith.edu.au>

Reducing Green Tape or Rolling back IA in Australia: What are four jurisdiction up to?

Associate Professor Garry Middle, Curtin University; Dr Beverly Clarke, Flinders University; Dr Daniel Franks, Centre for Social Responsibility in Mining; Professor Lex Brown, Griffith University; Associate Professor Jon Kellett, University of South Australia; Professor Stewart Lockie, Australian National University; Associate Professor Angus Morrison-Saunders, Murdoch University; Dr Jenny Pope, Adjunct Research Fellow, Curtin University; Professor John Glasson, Oxford Brookes University; Elizabeth Harris, Centre for Primary Health Care and Equity, University of NSW; Ben Harris-Roxas, Harris-Roxas Health.

Introduction

EIA has been practiced in Australia and the rest of the world for over 40 years, but despite its successes, EIA may now be facing its biggest challenge since it came into being in 1970 with the US *National Environmental Policy Act*. As Morgan (2012, 11) notes:

As governments look to stimulate economic growth and create employment in response to the current financial crisis, many are promoting a major expansion of physical infrastructure, encouraging resource development projects, and generally seeking to speed decision-making about development projects. Both EIA and SEA should be even more important in such circumstances, yet the moves taken in some countries to speed up decision-making may weaken the provisions for environmental protection, including impact assessment.

In this political and economic environment, EIA is under scrutiny. Proposed changes to the EU directive on EIA released in October 2012 contain ten changes to the Articles of the Directive, with six of these referring to either 'streamlining' EIA or introducing specific timeframes for parts of the EIA process (European Commission 2012). This scrutiny has not been restricted to economies in recession, but includes those that have avoided recession because of strong resources sectors.

The same appears to be happening in Australia, and this paper reports on these and other possible 'efficiency' changes to EIA in Australia at both national and sub-national levels. We attempt to critically examine the nature of such changes and the risks that may be associated with their implementation. Changes to three of the sub-national EIA processes are reviewed in detail, as well as the proposed changes to the national EIA process.

There is always room for more timely assessments, but a critical examination of the potential consequences of these "reforms" on the conduct of EIAs is needed, including whether these efficiency changes will deliver sound environmental management and sustainability-oriented decision-making.

Methodology for assessment

Thirteen (13) criteria were used to assess the changes to EIA processes, based primarily on those developed by Gibson (2012) where he assessed the recent changes to the Canadian Federal EIA against 10 'principles'. This general approach of using 'principles' or criteria as the basis for assessment is consistent with one of the approaches to sustainability assessment recommended by Pope, Morrison-Saunders, and Annandale (2005).

Gibson's work provides a useful starting point, but a key problem with this work is that the principles applied relate primarily to the EIA *process* and other non-process issues that should be considered, for example, effectiveness. Two key references were used to review Gibson's principles: The International Association for Impact Assessment (IAIA) principles of best practice EIA (International Association for Impact Assessment and UK Institute of Environmental Assessment 1999); and a review of methods for assessing or evaluating policy provides carried out by Middle (2010). This review suggested three additional criteria should be used in our analysis: effectiveness, performance efficiency, and adaptation. In summary, the thirteen (13) criteria used in this study are

- Screening – Are all proposals with potentially significant impacts are subject to EIA?
- Scoping – Are all significant biophysical, social and economic impacts are covered?
- Focus – Does EIA focuses on the significant proposals, and their potential impacts, and does not cover proposals with minor impacts and/or impacts that are not significant?
- Alternatives – Do assessments consider alterative proposals and, for the preferred option, are alternatives that avoid of significant impacts considered?

- Good decision-making – Are assessments and final decision-making objective/independent, open and transparent, and is the responsibility for decisions made clear?
- Integrated decision-making – Are the outcomes of EIA integrated with other decision-making processes?
- Participation – Are there adequate opportunities for public input?
- Timing – Does the EIA process occur early on in the overall decision-making process?
- Effectiveness - Are established environmental standards strengthened/weakened; are there opportunities to avoid established environmental standards; are there opportunities to include established environmental standards not previously covered by EIA?
- Adaptive – Are flexibility, on-going learning and innovation allowed for and facilitated or discouraged?
- Efficiency – Are there reduced cost burdens in terms of time and finance for both proponents and other participants?
- Certainty – Is EIA decision making predictable based on clearly established policy and not *ad hoc*?
- Follow-up – Does EIA leads to legally binding outcomes, which includes enforceable auditing and monitoring of impacts?

Data and limitations

The preparation of this paper provided some interesting challenges. The political climate continues to change and evolve at both the state and federal level, including changes of governments, changes of Prime Ministers and State Premiers, and changing environmental policies. As well, the only information available upon which to do the analysis is third party published and unpublished information, including government press releases, government agency information, opinion pieces from key stakeholders, notably industry and conservation groups, and personal communications from, and formal interviews with, key people involved in EIA. Whilst we recognise the inherent subjectivity of this data, we adopted Denzin's (1978) triangulation approach to enhance the validity of our analysis. Triangulation involves examining the published information looking for common themes that are relevant to the above criteria. Where there are contradictions in the published data (typically, different views of industry and conservation groups) the conclusion drawn either expresses this mixed view or additional data is sought to understand which view is more likely to be accurate. Some readers may find this approach unsatisfactory and lacking rigour, but we are of the view that this topic is important and worthy of discussion and further exploration, and we see this work and the subjective approach adopted a useful starting point.

Context – what is happening in Europe?

Before applying our criteria to EIA systems in Australia, we briefly reflect on international trends. There has been considerable interest in recent years in gauging the state-of-the-art of impact assessment worldwide. The most recent account is provided by Pope et al (2013) in the March 2012 special issue of *Impact Assessment and Project Appraisal* journal.

However, having mentioned the EU Directive changes in our introduction, it is illuminating to assess these major proposed revisions. This is a major review of EIA in Europe after 25 years of operation of the Directive. The key objectives of the review related to simplification, correction of shortcomings, reflecting ongoing socio-economic and environmental changes and challenges, and adopting smarter regulation. There was widespread public, agency and governmental consultation as part of the review. There were three key shortcomings: screening procedure, quality and analysis of the EIA, and risks of inconsistencies within the EIA process and in relation to other processes.

Changes to screening involved streamlining to ensure EIAs are only carried out on projects with significant environmental impacts. Changes related to improving quality and analysis were mandatory scoping, assessment of reasonable alternatives, justification of final decision, mandatory post EIA-monitoring of significant adverse effects and consideration of key challenges, such as climate change, disaster risks and human health. However, socio-economic impacts are given lower priority, several issues open to interpretation (e.g. what is meant by reasonable alternatives), and there is no reference to enhancement.

Changes to address inconsistencies are welcome, for example introduction of timeframes for public consultation, screening decision and final decision stages in EIA process, and one-stop-shop approach to co-ordinate with other EU environmental legislation. However

concerns remain, in particular, will the changes achieve their objectives, and, more importantly, will the changes be implemented: for example, the UK government is pushing for a more proportionate approach?

The assessment of the proposed changes in the EU against the 13 criteria are summarised in Table 1. The assessment in the final column is qualitative. Where the changes deliver clear improvements this is noted using the word “improvement”. Where the changes deliver a reduction in the quality of EIA, this is noted using the word “lowering”. “Unclear” was used where the data suggest that it is uncertain that the changes would deliver an improvement to or lowering of the quality of EIA. Where the changes introduced both improvements to and a lowering of the quality of EIA, the word “mixed” was used.

Table 1: Assessment of EU Directive changes

Criteria	Analysis	Assessment
Screening	A significant concern. It is possible that the number of EIAs in will increase in the UK from 25,000 pa to 250,000 pa.	Lowering
Scoping	Mandatory scoping introduced, but limited on socio-economic impacts	Mixed
Focus	Better focus but only for projects that have significant effects. Clear overlap to screening proposals here. But may need FONSI process to get there (Finding of No Significant Impact).	Mixed
Alternatives	Better consideration of alternatives and focus on the alternative that is least environmentally impacting.	Improved
Good decision making	The aim of the changes is for better decision making, but some commentators have raised concerns.	Unclear
Integrated decision making	Should lead to better integration of decision making with clear focus on this in revision proposals, 'one stop shop' formally linking EIA, HRA,WFSD, IPPC etc., however SEA/SA link could have been discussed more.	Improvement
Participation	Already covered in earlier revisions to Directive, with Aarhus requirements. Timescales for consultation clarified.	Minimal improvement
Timing	Some clear timescales built in for screening and scoping, and decision making.	Improvement
Effectiveness	Difficult to make an assessment of this. The overall aim of the changes is for more effective EIA, but concern that efficiency changes may work against this.	Unclear
Adaptive	Introduction of mandatory monitoring of significant adverse effects should add increased adaptation.	Improvement
Efficiency	Debatable if efficiencies will be delivered by the proposed revisions. Major Member States have already expressed concerns about this.	Likely lowering
Certainty	Still problem of variations in practice across 27 Member States.	Likely lowering
Follow-up	Introduction of mandatory monitoring a significant improvement.	Improvement

In summary, our assessment of the EU Directive changes suggests that whilst there are some clear improvements (consideration of alternatives, better integration of decision making, timing and better adaptability), the changes may well deliver a lower standard EIAs in some key areas, notably poorer screening, less efficient EIAs and less certainty of outcomes.

Two key over-riding concerns are that these proposed revisions, and the limited improvements they promise, may be substantially compromised by ongoing negotiations between Member States, especially in context of economic recession/stagnation across Europe. As well, the increasing number of Member States in the EU poses a challenge for consistency of approach (there are 27 Member States in EU compared to 7 States/Territories in Australia), with much greater variations in prosperity.

Australia

Three sub-national (States) EIAs and the federal (Commonwealth) EIAs are assessed here.

South Australia (SA)

Other than for major mines, EIA in SA is carried out through the land use planning system under *the Development Act, 1993*. This Act allows the responsible Minister to declare a development proposal a major project if he/she considers it to be of major environmental, social or economic importance. The independent Development Assessment Commission (DAC), a State Government committee, is responsible for scoping, at which point, the preparation of the EIS is handed to the proponent. DAC assesses the EIS carried and makes recommendations to the Governor rather than the Minister. There have been some minor changes of the process in recent years, and the Government has set up an independent panel to review the whole planning system, which may result in further changes to the EIA system. Table 2 summarises the assessment of the changes to the SA EIA process.

Table 2: Assessment of changes to the SA EIA process

Criteria	Analysis	Assessment
Screening	The lack of any criteria apart from the Ministers opinion leaves the process open to interpretation. Contrasting behaviour of two recent Ministers bears this out.	Lowering
Scoping	DAC seen as generally good at scoping. Public consultation as previously allowed for at scoping stage but this was scrapped a few years ago. Concern that issues of concern to the local community will not be covered.	Lowering
Focus	No changes proposed here.	No change
Alternatives	The existing system does not adequately address the notion of alternatives, and SEA is not carried out in SA. No changes proposed.	No change
Good decision making	Existing concerns and criticisms about the impartiality and transparency of EIA in SA. The public views the system as not sufficiently transparent. No changes proposed here.	No change
Integrated decision making	Other than for major mines, this is seen as a strength of EIA in SA. Social impacts of mining remain a problem. No changes proposed.	No change
Participation	Concern about the adequacy of the existing public engagement process. Changes have been implemented here. Public consultation was previously allowed for at scoping stage but this was scrapped a few years ago.	Lowering
Timing	SA system considered efficient in terms of timelines and that EIA occurs early on in the process.	No change
Effectiveness	Difficult to assess the existing system but no changes proposed.	No change
Adaptive	Difficult to assess the existing system but no changes proposed.	No change
Efficiency	Generally considered an efficient system, and improvements made in the time taken to scope with removal of public input	Improved
Certainty	Difficult to assess the existing system but no changes proposed here. System is often described as designed to provide an "early no".	No change
Follow-up	This is a significant existing problem in the SA system, with little post implementation monitoring is poor. No changes proposed.	No change

In summary, our assessment of the changes to the SA EIA system suggests that whilst there has been some improvement in the efficiency of the process, this has come at the expense of public involvement and a lowering of the standard of scoping (related to the loss of public involvement in scoping). Further, this assessment has suggested that there are some significant existing weaknesses in the SA EIA process that are not being addressed - impartiality and transparency of EIA, the political nature of screening, consideration of alternatives, level of public engagement and poor follow-up.

Queensland

In Queensland, impact assessment is legislated under the *Environmental Protection Act 1994* and the *State Development and Public Works Organisation (SDPWO) Act 1971*, with the later Act defining the role of impact assessment for major projects declared environmentally significant. The election of the Liberal National government in March 2012 was accompanied by the implementation of a 'greentape reduction' strategy to streamline project approvals processes. The strategy included both legislative and procedural reform. The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and the *Mines Legislation Streamlining Amendments Bill 2012* contain key provisions that modify the process of project-level impact assessment.

Table 3 summarises the assessment of the changes to the Queensland EIA process.

Table 3: Assessment of changes to the Queensland EIA process

Criteria	Analysis	Assessment
Screening	Difficult to assess how changes will affect integrated decision making.	Unclear
Scoping	Streamlining of terms of reference so that they are no more than one page and only about key risks. Industry supports this but other are concerned that key issues may be missed. Focus away from cumulative impacts is a concern for non-industry stakeholders due to the very large number of co-located mining, petroleum and infrastructure project.	Overall lowering
Focus	Better focusing through streamlining of terms of reference.	Improved
Alternatives	Difficult to assess how changes will affect this.	Unclear
Good decision making	Concern that risk and outcomes-based reforms may lead to EIA not being a meaningful tool for decision-making and designing better projects.	Lowering
Integrated decision making	Difficult to assess how changes will affect integrated decision-making.	Unclear
Participation	Concern that the objective that the EIA process should take no longer than one year will reduce opportunities and effectiveness of public participation.	Lowering

Timing	No real change to timing.	No change
Effectiveness	Industry has argued that proponents should only be responsible for the direct impacts of each proposal and not cumulative impacts. Cumulative impacts less likely to be considered.	Lowering
Adaptive	Shift to outcome based conditions could provide greater flexibility.	Possibly improved
Efficiency	Improved especially through streamlining of terms of reference and the objective that the EIA process should take no longer than one year.	Improved
Certainty	Difficult to assess how changes will affect certainty.	Unclear
Follow-up	Follow-up requirements, including the removal of need for environmental management plans and social impact management plans, weakened.	Lowering

In summary, our assessment of the changes to the Queensland EIA system suggests that the main improvements relate to greater efficiency and tighter focus of EIAs, but this has come at the expense of poorer scoping (some key issues not covered – cumulative impacts and social impacts), much reduced public participation, poorer follow-up, less effective EIA and poorer decision making. It is fair to conclude that the changes to the Queensland EIA system are, overall, negative.

Western Australia (WA)

All EIAs in WA are carried out under the *Environmental Protection Act 1986*, which empowers the five person independent board, the Environmental Protection Authority (EPA), to carry out EIA. The EPA has developed Administrative Procedures that set out the details of the EIA process, and in 2010, following a significant review period, the EPA release revised Administrative Procedures (Government of Western Australia 2010) that contained important changes to the procedures of EIA. As the EPA itself noted, a key driver of these changes to the EIA process was

...there is increasing scrutiny on the EPA's capacity to deliver timely, high quality advice to Government. (EPA 2009, 1)

These revised Administrative Procedures are assessed here in Table 4.

Table 4. Assessment of changes to the WA EIA process

Criteria	Analysis	Assessment
Screening	There are mixed views on this. Screening will be more predictable with a stronger policy framework and risk based approach to issues identification, but concerns that these changes will lead to fewer EIAs being carried out.	Mixed views
Scoping	EPA has adopted a risk-based approach to scoping at the early stages of assessment, focusing on the key issues. There is concern that the benchmark at which risk is considered significant may be set too high. The EPA in practice has dealt with social issues in an inconsistent manner, sometime weaker sometimes stronger.	Unclear
Focus	Adopting a risk based approach to scoping will improve the focus of EIAs.	Improved
Alternatives	Alternatives generally well considered and no change to EPA's approach proposed.	No change
Good decision making	A stated aim of the changes is to make decision making more transparent, including the publishing of a more comprehensive policy framework.	Improved
Integrated decision making	A stated aim of the changes is to better integrate EIA with other approvals processes. More about timelines than better integration. EPA has stated it wants to do more SEA to enable better integration. Yet to be proven but some positive signs.	Unclear
Participation	A key concern for some stakeholders. Two of the levels of assessment have reduced public input during the assessment and one of the appeal rights removed.	Lowering
Timing	Introduction of target timelines for steps in the EIA process.	Improved
Effectiveness	A key change is a strengthening of the environmental policy framework. Probably lead to better environmental outcomes. Concern by some stakeholders that shift to outcome based conditions could lead to poorer environmental outcomes. EPA moving to have results of follow-up inform on-going EIA and should improve effectiveness.	Improved
Adaptive	Shift to outcome based conditions could provide greater flexibility.	Possibly improved
Efficiency	A clear and stated aim of the changes.	Improved
Certainty	Strengthening of the policy framework of the environmental issues should lead to greater certainty of outcomes.	Improved
Follow-up	EPA has recently has recently introduced initiatives to have the results for follow-up inform on-going EIA.	Improved

In summary, our assessment of the changes to the WA EIA system suggests that overall the recent changes should lead to a better EIA process, although a few concerns remain, notably weaker public participation and potentially poorer scoping.

Federal (Commonwealth)

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* allows the Minister to assess proposals that could significantly impact on, what the Act calls, matter of national environmental significance (NES). These are prescribed in the Act and involve specific places (for example Ramsar wetlands and World Heritage areas) habitats of threatened species and communities, and migratory species, and nuclear actions. The Australian constitution gives most of the key planning and development decisions to the States, which means it is highly likely that a significant proposal will not only require an EIA at the State level, it could also impact on matters of NES requiring assessment by the Commonwealth. Concern has grown, especially by industry groups and most of the State Governments, that dual EIAs are causing unnecessary costs and delays.

The Council of Australian Governments (Australia's peak inter-government forum whose members are the Prime Minister, State Premiers, Territory Chief Ministers and the president of the Local Government Association) has endorsed a series of reforms to EIA in Australia that, whilst intended to deliver better environmental outcomes, also seek to remove the need for both State and Commonwealth assessments (Council of Australian Governments 2012). In effect, the Australian Government is looking for opportunities to combine State and Federal EIAs into one assessment, most likely that the State process will substitute for the Commonwealth one.

The key focus of these proposed reforms is greater efficiency of the overall EIA process, and whilst there is little disagreement that, should these reforms be successful, greater efficiency will result, conservation and community groups have argued that most State EIA processes are much weaker than the Commonwealth process and that these proposed reforms will lead to much weaker environmental protections. The concerns are especially strong in States with already inadequate EIA processes (for example South Australia and Tasmania) and those states introducing their own efficiency reforms (Queensland, New South Wales and Western Australia). Given these complexities and the strong disagreements between stakeholders, the reforms have stalled, and it is not possible to provide a proper assessment of these reforms against our criteria.

Conclusion

Our review of EIAs reforms in Australia has suggested that, with one exception, the drive to make EIA more efficient (cutting green-tape) has led to a reduced quality of the EIA process with the likelihood of poorer environmental outcomes, with the exception of WA. Given the concerns about EIA reforms at the sub-national level (States) the decision of the Australian Government to put on hold its own reforms seems wise.

References

- Council of Australian Governments. 2012. Council of Australian Governments Meeting – Communiqué Canberra, 7 December 2012. Canberra.
- Denzin, Norman K. 1978. *The Research Act: A theoretical introduction to sociological methods*. 2nd ed. New York: McGraw-Hill.
- EPA. 2009. Review of the Environmental Impact Assessment Process in Western Australia. Perth Western Australia: Environmental Protection Authority.
- European Commission. 2012. Proposal for a Directive of the European Parliament and of the Council Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment. Brussels.
- Gibson, Robert B. 2012. "In Full Retreat: The Canadian government's new environmental assessment law undoes decades of progress." *Impact Assessment & Project Appraisal* no. 30 (3):179-188.
- Government of Western Australia. 2010. The Environmental Impact Assessment Administrative Procedures 2010. Government Gazette, WA: Government Printer.

- International Association for Impact Assessment, and UK Institute of Environmental Assessment. 1999. *Principles of Environmental Impact Assessment Best Practice*. Fargo, ND, USA: International Association for Impact Assessment.
- Middle, Garry. 2010. *Environmental Policy Making in Highly Contested Contexts: The success of adaptive-collaborative approaches*, Department of Urban and regional Planning, Curtin University of Technology, Perth, Western Australia.
- Morgan, Richard K. 2012. "Environmental Impact Assessment: the state of the art." *Impact Assessment and Project Appraisal* (30):5-14.
- Pope, Jenny, Alan Bond, Angus Morrison-Saunders, and F Retief. 2013. "Advancing the Theory and Practice of Impact Assessment: Setting the research agenda." *Environmental Impact Assessment Review* no. 41 (1):1-9.
- Pope, Jenny, Angus Morrison-Saunders, and David Annandale. 2005. "Applying sustainability assessment models." *Impact Assessment & Project Appraisal* no. 23 (4):293-302.