

Environment and Communications References Committee
Answers to questions on notice
Department of the Environment and Energy

Hearing: Regulatory framework governing water use by the extractive industry

Hansard Page: 47

Question Date: 2 May 2018

Question Type: Spoken

Senator Anthony Chisholm asked:

Senator CHISHOLM: Firstly, I want to get some clarity, from a departmental point of view, about how the water trigger works. Secondly, on the issue you raised about the Hunter, I'm curious as to how that came to happen—was it initiated by the state government or was it initiated by the feds?—in terms of looking at the strategic area and industry.

Answer:

The NSW government initiated the strategic assessment of a biodiversity plan for coal mining in the Upper Hunter Valley (the assessment) in 2011.

The agreement to undertake the assessment was entered into between the NSW government and the Australian Government in September 2012.

Further information about the Upper Hunter strategic assessment is available on the Department's

website: <http://www.environment.gov.au/protection/assessments/strategic/nsw-upper-hunter>.

Hearing: Inquiry into water use by the extractive industry

Hansard Page: 54

Question Date: 2 May 2018

Question Type: Spoken

Committee Chair Senator Janet Rice asked:

CHAIR: Mr Tregurtha, you talked us through the EIS process. Does the department provide guidelines as to what needs to be covered-off in the EIS?

Mr Tregurtha : We have a standard template, if you like, for what needs to be covered-off in the EIS. It is quite broad and quite high and generic...

CHAIR: At the moment, consideration of the health of groundwater ecosystems isn't in the—

Mr Tregurtha : We wouldn't set that out specifically. We can give you a copy of the generic ones. The way it would be phrased is that it is more likely to say 'evaluate any impacts on the affected matter', which in this case is the water resource. ...

Answer:

A copy of the generic guidelines for the content of a Public Environment Report/Environment Impact Statement are attached.

**GUIDELINES FOR THE CONTENT OF A DRAFT
PUBLIC ENVIRONMENT REPORT/ENVIRONMENT IMPACT
STATEMENT**

(Amend as required for specific projects)

Name of Project

***Environment Protection and Biodiversity Conservation Act
1999***

(Reference: **Number)**

GUIDELINES FOR A DRAFT PUBLIC ENVIRONMENT REPORT/ENVIRONMENT IMPACT STATEMENT FOR

NAME OF PROJECT AND PROPONENT

PREAMBLE

Name of Proponent proposes to description of proposal.

The proposal was referred under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) to the Minister for the Environment and Energy on date. The Minister determined on date that approval is required as the action has the potential to have a significant impact on the following matters of national environmental significance (NES) that are protected under Part 3 of the EPBC Act:

- List controlling provisions

Following the provision of preliminary information, the delegate of the Minister determined, on date, that the proposed activity be assessed by a Public Environment Report (PER)/Environment Impact Statement (EIS).

Information about the action and its relevant impacts, as outlined below, is to be provided in the PER/EIS. This information should be sufficient to allow the Minister to make an informed decision on whether or not to approve, under Part 9 of the EPBC Act, the taking of the action for the purposes of each controlling provision.

GENERAL ADVICE ON GUIDELINES

1 GENERAL CONTENT

The PER/EIS should be a stand-alone document that primarily focuses on the matters of NES listed above. It should contain sufficient information to avoid the need to search out previous or supplementary reports. The PER/EIS should take into consideration the EPBC Act Significant Impact Guidelines that can be downloaded from the following web site: <http://www.environment.gov.au/epbc/guidelines-policies.html>.

The PER/EIS should enable interested stakeholders and the Minister to understand the environmental consequences of the proposed development. Information provided in the PER/EIS should be objective, clear, and succinct and, where appropriate, be supported by maps, plans, diagrams or other descriptive detail. The body of the PER/EIS is to be written in a clear and concise style that is easily understood by the general reader. Technical jargon should be avoided wherever possible. Cross-referencing should be used to avoid unnecessary duplication of text.

Detailed technical information, studies or investigations necessary to support the main text should be included as appendices to the PER/EIS. It is recommended that any additional supporting documentation and studies, reports or literature not normally available to the public from which information has been extracted be made available at appropriate locations during the period of public display of the PER/EIS.

After receiving the Ministers approval to publish the report, the Proponent is required to make the draft PER/EIS available for a period of public comment. Specific instructions regarding publication requirements will be provided as part of the Minister's direction to publish.

If it is necessary to make use of material that is considered to be of a confidential nature, the Proponent should consult with the Department on the preferred presentation of that material, before submitting it to the Minister for approval for publication.

The level of analysis and detail in the PER/EIS should reflect the level of significance of the expected impacts on the environment. Any and all unknown variables or assumptions made in the assessment must be clearly stated and discussed. The extent to which the limitations, if any, of available information may influence the conclusions of the environmental assessment should be discussed.

The Proponent should ensure that the PER/EIS assesses compliance of the action with principles of Ecological Sustainable Development as set out in the EPBC Act, and the objects of the Act at Attachment 1. A copy of Schedule 4 of the EPBC Regulations, - *Matters to be addressed by draft public environment report and environmental impact statement* is at Attachment 2.

2 FORMAT AND STYLE

The [PER/EIS](#) should comprise three elements, namely:

- the executive summary;
- the main text of the document, and
- appendices containing detailed technical information and other information that can be made publicly available.

The guidelines have been set out in a manner that may be adopted as the format for the [PER/EIS](#). This format need not be followed where the required information can be more effectively presented in an alternative way. However, each of the elements must be addressed to meet the requirements of the EPBC Act and Regulations.

The [PER/EIS](#) should be written so that any conclusions reached can be independently assessed. To this end all sources must be appropriately referenced using the Harvard standard. The reference list should include the address of any Internet “web” pages used as data sources.

The main text of the [PER/EIS](#) should include a list of abbreviations, a glossary of terms and appendices containing:

- a copy of these guidelines;
- a list of persons and agencies consulted during the [PER/EIS](#);
- contact details for the Proponent; and
- the names of the persons involved in preparing the [PER/EIS](#) and work done by each of these persons.

Maps, diagrams and other illustrative material should be included in the [PER/EIS](#). The [PER/EIS](#) should be produced on A4 size paper capable of being photocopied, with maps and diagrams on A4 or A3 size and in colour where possible.

The Proponent should consider the format and style of the document appropriate for publication on the Internet. The capacity of the website to store data and display the material may have some bearing on how the document is constructed.

SPECIFIC CONTENT

1 GENERAL INFORMATION

This should provide the background and context of the action including:

- (a) the title of the action;
- (b) the full name and postal address of the designated Proponent;
- (c) a clear outline of the objective of the action;
- (d) the location of the action;
- (e) the background to the development of the action;
- (f) how the action relates to any other actions (of which the Proponent should reasonably be aware) that have been, or are being, taken or that have been approved in the region affected by the action;
- (g) the current status of the action; and
- (h) the consequences of not proceeding with the action.

2 DESCRIPTION OF THE ACTION

All construction, operational and (if relevant) decommissioning components of the action should be described in detail. This should include the precise location (including coordinates) of all works to be undertaken, structures to be built or elements of the action that may have impacts on matters of National Environmental Significance.

The description of the action must also include details on how the works are to be undertaken (including stages of development and their timing) and design parameters for those aspects of the structures or elements of the action that may have relevant impacts.

3 FEASIBLE ALTERNATIVES

Any feasible alternatives to the action to the extent reasonably practicable, including:

- (a) if relevant, the alternative of taking no action;
- (b) a comparative description of the impacts of each alternative on the NES matters protected by controlling provisions of Part 3 of the EPBC Act for the action; and
- (c) sufficient detail to make clear why any alternative is preferred to another.

Short, medium and long-term advantages and disadvantages of the options should be discussed.

4 DESCRIPTION OF THE ENVIRONMENT

A description of the environment of the proposal site and the surrounding areas that may be affected by the action. It is recommended that this include the following information:

- (a) Listed threatened and migratory species and ecological communities that are likely to be present in the vicinity of the site, including the following details:
 - Details of the scope, timing (survey season/s) and methodology for studies or surveys used to provide information on the listed species/community/habitat at the site (and in areas that may be impacted by the project).
 - [Other details required for site-specific species should be included here.](#)
- (b) A description of the World Heritage/National Heritage values of the World Heritage property/National Heritage Place relevant to the action.
- (c) A description of the ecological character of the Ramsar Wetland relevant to the action.
- (d) A description of the Commonwealth Marine environment relevant to the action.
- (e) A description of the Commonwealth Land environment relevant to the action.

5 RELEVANT IMPACTS

- (a) The [PER/EIS](#) must include a description of all of the relevant impacts of the action. Relevant impacts are impacts that the action will have or is likely to have on a matter protected by a controlling provision (as listed in the preamble of this document). Impacts during both the construction, operational and (if relevant) the decommissioning phases of the project should be addressed, and the following information provided:
 - a detailed assessment of the nature and extent of the likely short-term and long-term relevant impacts;
 - a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
 - analysis of the significance of the relevant impacts; and
 - any technical data and other information used or needed to make a detailed assessment of the relevant impacts.
- (b) The [PER/EIS](#) should identify and address cumulative impacts, where potential project impacts are in addition to existing impacts of other activities (including

known potential future expansions or developments by the proponent and other proponents in the region and vicinity).

The **PER/EIS** should also address the potential cumulative impact of the proposal on ecosystem resilience. The cumulative effects of climate change impacts on the environment must also be considered in the assessment of ecosystem resilience. Where relevant to the potential impact, a risk assessment should be conducted and documented.

- (c) The **PER/EIS** should also provide a detailed assessment of any likely impact that this proposed action may facilitate on the following (at the local, regional, state, national and international scale): **remove those that are not relevant**
- The World Heritage values of the Great Barrier Reef World Heritage Area;
 - The National Heritage values of the Great Barrier Reef National Heritage place;
 - Wetlands of international importance;
 - The environment of the Great Barrier Reef Marine Park;
 - Listed threatened species and ecological communities;
 - Listed migratory species;
 - The Commonwealth marine environment; and
 - A water resource, in relation to coal seam gas development and large coal mining development.

6 PROPOSED SAFEGUARDS AND MITIGATION MEASURES

The **PER/EIS** must provide information on proposed safeguards and mitigation measures to deal with the relevant impacts of the action. Specific and detailed descriptions of proposed measures must be provided and substantiated, based on best available practices and must include the following elements.

- (a) A consolidated list of mitigation measures proposed to be undertaken to prevent, minimise or compensate for the relevant impacts of the action, including:
- a description of the environmental outcomes the measures are expected to achieve including details of any baseline data or proposed monitoring to demonstrate progress towards achieving these outcomes;
 - a description of proposed safeguards and mitigation measures to deal with relevant impacts of the action, including mitigation measures proposed to be taken by State governments, local governments or the Proponent;
 - assessment of the expected or predicted effectiveness of the mitigation measures;
 - any statutory or policy basis for the mitigation measures; and
 - the cost of the mitigation measures.

- (c) A detailed outline of an Environmental Management Plan (EMP) that sets out the framework for management, mitigation and monitoring of relevant impacts of the action, including any provisions for independent environmental auditing.

The EMP needs to address the project phases (construction, operation, decommission) separately. It must state the environmental objectives, performance criteria, monitoring, reporting, corrective action, responsibility and timing for each environmental issue.

The EMP should also describe contingencies for events such as failure of sewerage systems, heavy or prolonged rainfall, or saltwater intrusion into ground water.

- (d) The name of the agency responsible for endorsing or approving each mitigation measure or monitoring program.

7 OTHER APPROVALS AND CONDITIONS

The **PER/EIS** must include information on any other requirements for approval or conditions that apply, or that the proponent reasonably believes are likely to apply, to the proposed action. This must include:

- (a) details of any local or State Government planning scheme, or plan or policy under any local or State Government planning system that deals with the proposed action, including:
- what environmental assessment of the proposed action has been, or is being, carried out under the scheme, plan or policy; and
 - how the scheme provides for the prevention, minimisation and management of any relevant impacts;
- (b) a description of any approval that has been obtained from a State, Territory or Commonwealth agency or authority (other than an approval under the Act), including any conditions that apply to the action;
- (c) a statement identifying any additional approval that is required; and
- (d) a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action.

8 CONSULTATION

Any consultation about the action, including:

- (a) any consultation that has already taken place;
- (b) proposed consultation about relevant impacts of the action;

- (c) if there has been consultation about the proposed action, any documented response to, or result of, the consultation; and
- (d) identification of affected parties, including a statement mentioning any communities that may be affected and describing their views.

9 ENVIRONMENTAL RECORD OF PERSON(S) PROPOSING TO TAKE THE ACTION

The information provided must include details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:

- (a) the person proposing to take the action; and
- (b) for an action for which a person has applied for a permit, the person making the application.

If the person proposing to take the action is a corporation, details of the corporation's environmental policy and planning framework must also be included.

10 ECONOMIC AND SOCIAL MATTERS

The economic and social impacts of the action, both positive and negative, must be analysed. Matters of interest may include:

- details of any public consultation activities undertaken, and their outcomes;
- projected economic costs and benefits of the project, including the basis for their estimation through cost/benefit analysis or similar studies;
- employment opportunities expected to be generated by the project (including construction and operational phases).

Economic and social impacts should be considered at the local, regional and national levels. Details of the relevant cost and benefits of alternative options to the proposed action, as identified in section 3 above, should also be included.

11 INFORMATION SOURCES PROVIDED IN THE PER/EIS

For information given in a draft [Public Environment Report or Environmental Impact Statement](#), the draft must state:

- (a) the source of the information;
- (b) how recent the information is;
- (c) how the reliability of the information was tested; and
- (d) what uncertainties (if any) are in the information.

12 CONCLUSION

An overall conclusion as to the environmental acceptability of the proposal should be provided, including discussion on compliance with principles of ESD and the objects and requirements of the EPBC Act. Reasons justifying undertaking the proposal in the manner proposed should also be outlined.

Measures proposed or required by way of offset for any unavoidable impacts on NES matters, and the relative degree of compensation, should be restated here.

ATTACHMENT 1

THE OBJECTS AND PRINCIPLES OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999* SECTIONS 3 AND 3A

3 Objects of the Act

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance;
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- (c) to promote the conservation of biodiversity;
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples;
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities;
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

3A Principles of Ecologically Sustainable Development

The following principles are principles of ecologically sustainable development.

- (a) Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations.
- (b) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (c) The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

- (d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.
- (e) Improved valuation, pricing and incentive mechanisms should be promoted.

ATTACHMENT 2

MATTERS THAT MUST BE ADDRESSED IN A PER AND EIS (SCHEDULE 4 OF THE EPBC REGULATIONS 2000)

1 General information

1.01 The background of the action including:

- (a) the title of the action;
- (b) the full name and postal address of the designated Proponent;
- (c) a clear outline of the objective of the action;
- (d) the location of the action;
- (e) the background to the development of the action;
- (f) how the action relates to any other actions (of which the Proponent should reasonably be aware) that have been, or are being, taken or that have been approved in the region affected by the action;
- (g) the current status of the action; and
- (h) the consequences of not proceeding with the action.

2 Description

2.01 A description of the action, including:

- (a) all the components of the action;
- (b) the precise location of any works to be undertaken, structures to be built or elements of the action that may have relevant impacts;
- (c) how the works are to be undertaken and design parameters for those aspects of the structures or elements of the action that may have relevant impacts;
- (d) relevant impacts of the action;
- (e) proposed safeguards and mitigation measures to deal with relevant impacts of the action;
- (f) any other requirements for approval or conditions that apply, or that the Proponent reasonably believes are likely to apply, to the proposed action;

(g) to the extent reasonably practicable, any feasible alternatives to the action, including:

- (i) if relevant, the alternative of taking no action;
- (ii) a comparative description of the impacts of each alternative on the matters protected by the controlling provisions for the action; and
- (iii) sufficient detail to make clear why any alternative is preferred to another;

(h) any consultation about the action, including:

- (i) any consultation that has already taken place;
- (ii) proposed consultation about relevant impacts of the action; and
- (iii) if there has been consultation about the proposed action — any documented response to, or result of, the consultation; and

(i) identification of affected parties, including a statement mentioning any communities that may be affected and describing their views.

3 Relevant impacts

3.01 Information given under paragraph 2.01(d) must include

- (a) a description of the relevant impacts of the action;
- (b) a detailed assessment of the nature and extent of the likely short term and long term relevant impacts;
- (c) a statement whether any relevant impacts are likely to be unknown, unpredictable or irreversible;
- (d) analysis of the significance of the relevant impacts; and
- (e) any technical data and other information used or needed to make a detailed assessment of the relevant impacts.

4 Proposed safeguards and mitigation measures

4.01 Information given under paragraph 2.01(e) must include:

- (a) a description, and an assessment of the expected or predicted effectiveness of, the mitigation measures;
- (b) any statutory or policy basis for the mitigation measures;
- (c) the cost of the mitigation measures;

- (d) an outline of an environmental management plan that sets out the framework for continuing management, mitigation and monitoring programs for the relevant impacts of the action, including any provisions for independent environmental auditing;
- (e) the name of the agency responsible for endorsing or approving each mitigation measure or monitoring program; and
- (f) a consolidated list of mitigation measures proposed to be undertaken to prevent, minimise or compensate for the relevant impacts of the action, including mitigation measures proposed to be taken by State governments, local governments or the Proponent.

5 Other Approvals and Conditions

5.01 Information given under paragraph 2.01(f) must include:

- (a) details of any local or State government planning scheme, or plan or policy under any local or State government planning system that deals with the proposed action, including:
 - (i) what environmental assessment of the proposed action has been, or is being carried out under the scheme, plan or policy; and
 - (ii) how the scheme provides for the prevention, minimisation and management of any relevant impacts;
- (b) a description of any approval that has been obtained from a State, Territory or Commonwealth agency or authority (other than an approval under the Act), including any conditions that apply to the action;
- (c) a statement identifying any additional approval that is required; and
- (d) a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action.

6 Environmental record of person proposing to take the action

6.01 Details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:

- (a) the person proposing to take the action; and
- (b) for an action for which a person has applied for a permit, the person making the application.

6.02 If the person proposing to take the action is a corporation — details of the corporation's environmental policy and planning framework.

7 Information sources

7.01 For information given the PER/EIS must state:

- (a) the source of the information; and
- (b) how recent the information is; and
- (c) how the reliability of the information was tested; and
- (d) what uncertainties (if any) are in the information.