



Effectiveness of the Environmental Effects Statement Process



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Auditor-General

Effectiveness of the Environmental Effects Statement Process

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The Hon Bruce Atkinson MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Colin Brooks MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report
Effectiveness of the Environmental Effects Statement Process.

Yours faithfully



Andrew Greaves
Auditor-General

22 March 2017

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Audit overview

Land use planning and development are important for meeting the changing needs of the growing Victorian population. The effects of development on the environment are critical considerations in planning and development.

An environmental impact assessment is a tool used to predict the environmental, social and economic effects of a proposed development at an early stage in project planning and design. The assessment aims to find ways to reduce negative impacts, and to shape projects to suit the local environment.

In Victoria, environmental impact assessments of proposed development projects are conducted through the Environmental Effects Statement (EES) process under the *Environment Effects Act 1978* (EE Act). The Minister for Planning (the minister) administers the EES process through the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (Ministerial Guidelines). The Department of Environment, Land, Water and Planning (the department) manages this process.

In this audit, we examined if the department is managing the EES process effectively.

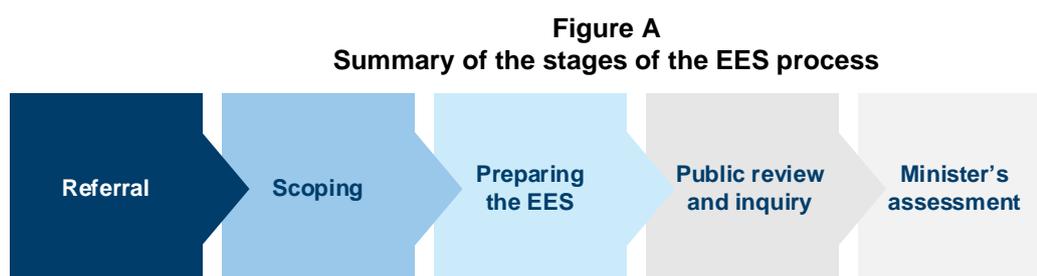
The EES process

The objective of the EES process is to provide a transparent, integrated and timely assessment of potential significant effects a project may have on the environment.

The process is complex, time-consuming and involves multiple stages. As a result, it has cost implications for project developers and can create uncertainty for members of the community who may be affected by a project's potential negative effects on their local environment.

An EES is required only for projects likely to have significant regional or statewide environmental impacts. The minister determines which projects need to go through the EES process. Few projects meet this threshold—on average, only two or three projects are subject to the EES process each year.

Figure A summarises the stages of the EES process.



Source: VAGO.

Statutory responsibility for the decision to proceed with a development project varies depending on the nature of each project. Statutory decision-makers—such as municipal councils—are responsible for approving the project under other legislation. The minister's assessment helps them make informed planning decisions. Statutory decision-makers have discretion as to whether or not they accept the minister's recommendation.

Past reviews

Since 2000, two reviews and a Parliamentary inquiry have focused on the EE Act and the EES process. They found the legislation and associated EES processes to be costly, and lacking clarity and transparency.

Between 2000 and 2013, successive governments committed to reforming the EES process, yet no significant legislative changes have occurred.

Conclusion

In the absence of legislative reform, the department is constrained in its ability to improve outcomes from the EES process for developers and the community.

The department has focused on administrative improvement to its internal processes through the introduction of a quality management system (QMS). The QMS supports the department to provide evidence-based and comprehensive advice to the minister on projects it knows should be subject to an EES. However, it does not have a mechanism to ensure that all projects meeting the criteria are referred to the minister for an EES decision.

The department oversees the implementation of ministerial conditions for projects, in lieu of an EES. However, it has not established a comprehensive system to monitor and document the current level of compliance with the conditions imposed.

An evaluation framework would help the department drive further improvement in the administration of the EES process. Insights from data and greater understanding through a more systemic approach to evaluation would better inform whether any aspects of the legislative framework require improvement.

Findings

Improving the EES process

Legislative reform

The most recent reform activity occurred following the 2011 Parliamentary report *Inquiry into the Environmental Effects Statement Process in Victoria*. The Environment and Natural Resources Committee concluded that Victoria's environmental impact assessment system was not meeting its objectives.

The committee recommended extensive legislative reform to increase certainty, reduce costs and shorten time frames. Its 50 recommendations detail the attributes and workings of an effective environmental impact assessment system.

The Parliamentary report identified issues raised by witnesses and in written submissions about the EES process, including:

- the lack of detail in the EE Act and uncertainty of the status of the Ministerial Guidelines made under the EE Act
- the non-binding nature of the minister's recommendations and conditions
- barriers to public participation
- the need for more robust monitoring and auditing arrangements.

In response to the inquiry, the former government committed to reforming the EE Act and EES process.

Between October 2012 and October 2013 the then Department of Planning and Community Development consulted with relevant departments, agencies and stakeholders, and commissioned external consultants to provide further advice on how to improve the EES process. It estimated that the proposed reforms could deliver approximately \$16 million in savings per year, primarily due to a reduction in the costs associated with the current EES process.

The government agreed to the policy reforms but in late 2013 decided not to proceed with the proposed reforms. It did not provide reasons to the public or the department for discontinuing reform efforts.

There is currently no further work underway to reform the EE Act or EES process.

Improving internal processes

The department has demonstrated its commitment to improving its internal management of the EES process. However, its improvements to internal processes have not resolved fundamental issues with the EES process identified in previous reviews.

In 2015, the department introduced its QMS for the EES process to provide departmental staff with documented practice guidelines for all stages of the process. Use of the QMS has achieved greater consistency in how staff approach stages in the EES process.

The QMS has inbuilt review dates, but the department has not met these review dates since the QMS was rolled out in mid-2015. When staff identify issues or errors, QMS processes are updated on an as-needed basis.

The department has not adopted a systematic approach to its review of QMS processes and cannot be assured that its internal processes are current and meet the needs of the EES process.

Referral, scoping and preparation of EESs

Referral of projects

The EE Act applies to any development project in Victoria that the minister decides has the potential to cause significant environmental effects at the regional or state level.

The EE Act and the Ministerial Guidelines place responsibility on proponents to refer their own projects to the EES process. There are no penalties for proponents who do not refer projects that meet the referral criteria to the minister for consideration.

The department relies on its networks with other government departments and private industry professionals to inform it of upcoming projects that are appropriate for referral to the EES process. It does not have any other mechanism to ensure that all projects meeting the criteria are referred to the minister for an EES decision. Other decision-makers can also make a referral to the EES process.

Although we did not find evidence of projects not being referred, the absence of a robust process for identifying projects for referral creates a risk that the department might miss projects that should be referred, or might identify them too late to activate the EES process. Without systems to identify projects that should be referred, the EES process relies on project developers to be ethical in their practices, and on the effectiveness of networks the department has in place.

Referral advice to the minister

When the department is aware that projects should be considered for an EES, its advice to the minister is evidence-based and comprehensive.

During the referral process, the department considers advice supplied by the proponent about the project and its possible environmental effects. The department verifies the accuracy and completeness of this information and uses this analysis in its advice to the minister.

The department's advice outlines the risks and benefits associated with the project proceeding with or without an EES. It also identifies the matters the minister is required to consider under the Ministerial Guidelines when making this decision.

Establishing scoping requirements

Once the minister decides to proceed with an EES, the department relies on proponents to provide additional information on the project and environmental considerations to inform its drafting of the scope of the EES.

Since 2015 the department has used its QMS to help staff communicate relevant information about the scoping process consistently to proponents.

Although the department has internal QMS guidelines that document specific information required at the scoping stage of the EES process, it does not make this document available to proponents. Proponent consultants advised us that without clear and detailed guidelines they are unsure about the specific information they need to provide in the scoping process. This can lead to challenges for proponents in accurately costing and scheduling their project plans.

Scoping

The department advised us that proponents should take a risk-based approach in their study design when responding to the scope of matters the minister has set for the development of an EES for their project.

The department's role is to draft the scope of matters for consideration and then to review the proponent's response. The department also provides advice to assist the proponent to comply with the Ministerial Guidelines and, with the assistance of a technical reference group (TRG), reviews the proposed scope of the EES.

Ultimately, the proponent is responsible for the quality of the EES and ensuring that it has adopted a risk-based approach to investigating the environmental effects that may arise. However, the department exercises considerable influence during the drafting of the proposed scope, and it needs to provide greater clarity to proponents on their role and responsibilities, and those of the department, in this process.

Coordinating and administering TRGs

A TRG—with members from government agencies, local government and statutory authorities—is appointed for each project subject to the EES process. The TRG provides advice to the proponent and the department during the preparation of the EES.

The department coordinates and administers TRGs effectively, and its approach to establishing TRGs is soundly based.

The department sends invitations to participate in TRGs to departments, agencies and councils, who then decide which staff members to send. The department's processes require TRG members to have relevant technical and statutory experience to assist with the preparation of a sound EES.

Proponent consultants we interviewed reported that when TRG members did not have the necessary knowledge, experience or authority the TRG could not perform to its optimal capacity.

Inquiries and public participation

During the scoping stage of the EES process, the department manages the public consultation process in line with the Ministerial Guidelines.

In the public review stage, all projects we examined conducted reviews through an 'inquiry by formal hearing'. In formal hearings, common wording in the terms of reference for inquiries is 'a minimum of formality' and no requirements for legal representation. Yet all proponents in these projects had legal representation, which created a perception of disadvantage for members of the public who did not have representation.

Under the Ministerial Guidelines, when the EES is released for public input, the department can choose from three inquiry and consultation options in its advice to the minister on its recommended approach. However, all of the projects we examined used the inquiry by formal hearing method, and the department did not outline its rationale for recommending this method to the minister over other inquiry options.

Evaluating the outcomes of the EES process

To evaluate the outcomes of the EES process, there are two different streams of work that need to be assessed:

- the department's central monitoring of the minister's recommendations made in lieu of the requirement for a full EES
- how statutory decision-makers respond to recommendations in the minister's assessment.

Conditions in lieu of an EES process

The EE Act authorises the minister to set conditions for a development project in lieu of requiring an EES. If the proponent does not comply with these conditions, the minister has the legislative authority to ask the proponent to prepare an EES.

Although the department oversees the implementation of conditions set in lieu of an EES, it does not have a comprehensive system for monitoring these conditions. The department cannot be assured that its current processes can accurately monitor the extent of compliance and report accordingly.

The department could conduct targeted sampling and analysis of information on how project proponents have adopted and implemented the recommendations resulting from the minister's decision.

Minister's assessment

The minister's assessment makes recommendations that inform statutory decision-making on whether projects can proceed and any conditions that might apply.

Because statutory decision-makers are not bound by the minister's assessment, it may not be reasonable to expect the department to directly oversee the activities of decision-makers. However, implementing self-reporting by statutory decision-makers would allow the department to track responses to the minister's assessment, and evaluate and report this information to the minister.

Recommendations

We recommend that the Department of Environment, Land, Water and Planning:

1. review its position on whether legislative review of the *Environment Effects Act 1978* and further reform of the Environmental Effects Statement process is required to meet the current needs of proponents and stakeholders (see Section 2.2.3)
2. systematically review its internal Environmental Effects Statement guidance documents in its quality management system and update them as required (see Section 2.3.2)
3. develop and implement a risk-based system to monitor and document compliance with conditions imposed in lieu of a full Environmental Effects Statement, to identify circumstances when an Environmental Effects Statement becomes necessary (see Section 2.3.4)
4. investigate, identify and implement an appropriate process for statutory decision-makers to report to the department their response to recommendations in the Minister's Assessment in their final decisions (see Section 2.3.3)
5. publish a guide on the inputs and level of detail required from proponents at the scoping stage of the Environmental Effects Statement process (see Section 3.3.1)
6. develop scoping requirements for each Environmental Effects Statement that achieve a balance between:
 - focusing on key potentially significant environmental effects
 - providing sufficient information on other environmental issues and effects to inform the efficient coordination of decisions for interfacing statutory processes (see Section 3.3.2)
7. establish a process and seek agreement with relevant agencies participating in technical reference groups for securing individual reference group members with subject matter and procedural expertise, and the appropriate level of delegation to represent their organisation (see Section 3.4)
8. outline its reasoning when providing advice to the Minister for Planning on inquiry options for the public review stage of the Environmental Effects Statement process (see Section 4.3.4).

Responses to recommendations

We consulted with the Department of Environment, Land, Water and Planning, and we considered its views when reaching our audit conclusions. As required by section 16(3) of the *Audit Act 1994* we provided a copy of this report to this agency and asked for its submissions and comments. We also provided a copy of the report to the Department of Premier and Cabinet.

The following is a summary of the responses. The full responses are included in Appendix A.

The Department of Environment, Land, Water and Planning supported our recommendations and provided a detailed action plan on how it intends to address them.

1 Audit context

1.1 Environmental impact assessment

An effective system for assessing potential environmental impacts is critical for limiting the negative effects of development on the environment and the community. According to international principles for good practice in environmental impact assessment, an effective system is an integrated process that addresses the social, economic and biophysical aspects of the environment.

In Australia, the environmental impacts of major projects are managed under several Acts and statutory approval processes across local, state and Commonwealth jurisdictions.

In Victoria, for projects likely to have a significant environmental impact, the Environmental Effects Statement (EES) process is the main statutory mechanism for assessing environmental effects at the state or regional level. An EES considers significant direct, indirect and cumulative environmental effects.

The EES process uses a broad definition of environment, including:

- physical systems—such as air quality, greenhouse gas emissions and energy consumption
- ecological systems—such as populations or habitat of indigenous species of flora or fauna
- human communities and the impacts on them—such as potential changes to local population and demographic profile, physical hazards to human health, and effects on Aboriginal and non-Aboriginal cultural heritage
- land use—such as disruption or change to existing rural and urban land uses
- the economy—such as levels of income, investment and jobs.

Figure 1A outlines what is considered to be a significant effect on the environment, according to the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (Ministerial Guidelines).

Figure 1A
Significant effect on the environment

The potential for a project to have a significant effect on the environment stems from three factors:

- significance of the environmental assets affected, relating to:
 - character of the potentially affected environmental assets
 - geographic occurrence of the environmental assets
 - values or importance of the environmental assets
- potential magnitude, extent and duration of adverse effects on environmental assets in the short, medium and longer term, as a result of the development, operation and, where relevant, decommissioning of a project
- potential for more extended adverse effects in space and time, as a result of interactions of different effects and environmental processes affecting environmental assets.

Source: VAGO based on the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978*.

1.2 Legislation and guidelines

1.2.1 State legislation

The EES process is administered under the *Environment Effects Act 1978* (EE Act). The EE Act applies to both private and government projects with the potential to have a significant effect on the environment. The Minister for Planning (the minister) is responsible for administering the EE Act.

The legislation states that an EES must be prepared before beginning any projects that are likely to have a significant environmental impact.

1.2.2 Commonwealth legislation

The EE Act interacts with the Commonwealth legislative framework for environmental impact assessment. The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) requires an environmental impact assessment to be done for projects that are likely to have a significant impact on any of the nine specific matters of national environmental significance set down in the EPBC Act.

In 2014, Victoria signed a bilateral agreement with the Commonwealth Government. This agreement allows projects likely to have a significant impact on matters of national environmental significance to be assessed through Victorian accredited processes, including the EES process. The Commonwealth minister responsible for the environment makes the final decision on projects requiring an environmental impact assessment under the EPBC Act. In making this decision, the Commonwealth minister takes into account the EES assessment made by the Victorian minister.

1.2.3 Ministerial Guidelines

Most decisions in the EES process are determined at the discretion of the minister.

The EE Act does not:

- include an objective for the EES process
- detail the specific components of the EES process
- require monitoring of compliance with any decisions made through the process.

To assist with interpretation of the legislation, under Section 10 of the EE Act the minister can issue guidelines for the application and administration of the EES process. The Ministerial Guidelines are the main source of guidance for the requirements of the EE Act and EES process. The current version came into effect in June 2006 and has not been amended since.

The Ministerial Guidelines state that the objective of the EES process is to enable the transparent, integrated and timely assessment of potential significant effects a project may have on the environment.

1.3 Responsibility for the Environmental Effects Statement process

1.3.1 Minister for Planning

The minister is responsible for the EES process. The key decisions the minister makes throughout the process include:

- whether a project requires an EES
- what issues and areas the EES should examine
- whether an inquiry is required, what form the inquiry will take and the terms of reference.

After a project proponent prepares an EES, the minister makes an assessment that can recommend:

- whether or not a project should proceed on environmental grounds
- what actions the proponent or another statutory decision-maker needs to take before a project can be considered environmentally acceptable.

1.3.2 Departmental roles and responsibilities

The Department of Environment, Land, Water and Planning (the department)—specifically the Impact Assessment Unit—is responsible for managing the EES process and providing advice to the minister.

The department's key functions in the EES process include:

- assessing EES referrals and providing advice to the minister on whether an EES should be required for a project
- preparing EES scoping requirements for the minister to consider
- appointing and convening technical reference groups (TRG), which provide technical and policy advice to proponents and to the department
- reviewing draft EES documents and providing feedback to proponents
- analysing EES documents and other related information, such as public submissions and inquiry reports
- drafting content of Minister's Assessments and advising on recommendations to inform the minister's assessment of whether a project should proceed on environmental grounds.

The EE Act states that, if requested, the secretary of the department must give advice and assistance to a proponent to support proper preparation of an EES.

1.4 The Environmental Effects Statement process

An EES may be required for a project when:

- there is a likelihood of significant adverse environmental effects (including social and economic effects)
- there is a need for an integrated assessment of potential environmental effects
- normal statutory processes would not provide a sufficiently comprehensive, integrated and transparent assessment.

The EES process is complex and involves multiple stages. Affected local councils, environment and planning agencies, technical experts and the community provide input at various points in the process.

Very few projects are referred for an EES—since September 2011, only 31 projects have received a decision from the minister on whether they need an EES. Two projects have also been declared 'public works', which require an EES under section 3 of the EE Act, bypassing the usual referral process.

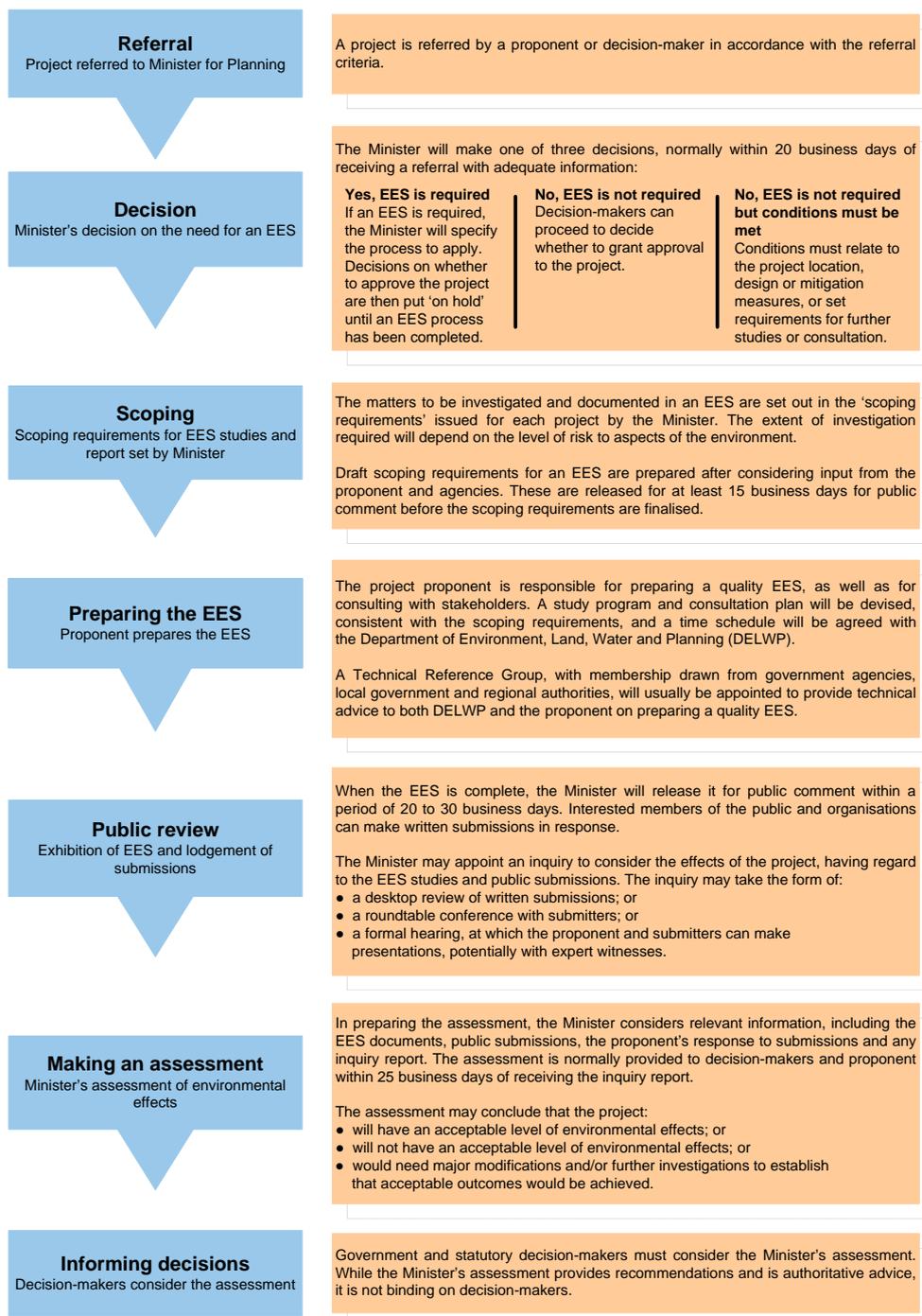
The EES process is not an approval process. Statutory decision-makers—such as municipal councils—are responsible for approving the project under other legislation. The minister's assessment helps them make informed planning decisions. Statutory decision-makers have discretion as to whether or not they accept the minister's recommendation.

Under the EE Act, a project undergoing the EES process must not proceed until the minister has assessed the project's environmental effects and the assessment has been considered by statutory decision-makers.

The stages of the EES process are detailed in Figure 1B.

Figure 1B
Stages of the EES process

How does the EES process work?



Source: Department of Environment, Land, Water and Planning.

1.4.1 Referral

The Ministerial Guidelines emphasise the proponent's responsibility for referring projects to the minister to decide if an EES needs to be prepared. The Ministerial Guidelines also identify other relevant decision-makers who may refer projects, including:

- ministers or statutory bodies responsible for public works
- municipal councils
- Environment Protection Authority Victoria
- ministers or agencies administering relevant approvals legislation.

The Ministerial Guidelines outline 22 criteria for deciding when a project should be referred. While this is not an exhaustive list, all criteria are connected to the concept of significant environmental effect.

1.4.2 Scoping

Once a decision has been made that an EES is required, the department needs to determine its scope. The scoping stage establishes the elements of potential environmental impact that proponents need to investigate during the EES process. The extent of investigation required will depend on the level of risk to aspects of the environment.

During this stage, the department coordinates:

- information required from project proponents
- preparation of draft scoping requirements
- public consultation
- advice to the minister on scoping requirements
- issuing approved scoping requirements to the proponent and publishing them on the department's website.

1.4.3 Technical reference groups

The department usually establishes a TRG at the start of an EES process. The TRG's purpose is to provide advice to the department and the proponent throughout the scoping and preparation of the EES.

TRGs comprise representatives from state and federal government departments, statutory authorities, and local councils that have a statutory or policy interest in the project. They typically provide advice on:

- what should be included in the scoping requirements
- the need for and adequacy of technical studies
- the technical adequacy of the proposed EES
- the suitability of environmental mitigation, management or offset measures proposed by the proponent
- any other statutory approvals that will be required for the project.

As well as establishing TRGs and appointing members, the department also coordinates and administers them.

1.4.4 Inquiries and public review

Once the proponent has prepared the EES, the department oversees a public review process that includes:

- public notice of the EES
- public display of the EES for a specified period
- receipt of public submissions.

The department provides advice to the minister on whether the process should include an inquiry, as outlined in the EE Act and Ministerial Guidelines. The Ministerial Guidelines provide three options for an inquiry:

- inquiry by written submission
- inquiry by submitter conference
- inquiry with a formal hearing.

If an inquiry is held, the minister appoints a panel of people with relevant expertise to examine the potential environmental effects of a project.

Although an inquiry is an optional step in the EES process, in practice an inquiry with a formal hearing was held for all projects within the scope of this audit—see Appendix B for the full list of projects examined.

Planning Panels Victoria is responsible for administering EES inquiry panels. It administers and manages all aspects of the inquiry stage of the EES process. Planning Panels Victoria is located within the department, but it is a separate business unit from the Impact Assessment Unit, which manages the majority of the EES process. This separation provides an additional layer of independence for the inquiry.

1.5 Previous VAGO audits

VAGO has not previously audited the management of the EES process. However, we have tabled two audit reports that examined EESs in specific circumstances:

- *Unconventional Gas: Managing Risks and Impacts*, in 2015, highlighted that the EES process was the key assessment that decision-makers relied on to determine the environmental impact of unconventional gas activities, yet there is no legal requirement for an EES process to be undertaken and no binding decisions result from the process.
- *The Channel Deepening Project*, in 2009, identified that the EES for the project had to be revised following an independent EES panel review, which found that the environmental risk analysis was not methodologically sound, lacked integration and required further development.

1.6 Previous reviews and inquiries

Since 2000, two reviews and a Parliamentary inquiry have focused on the EE Act and the EES process:

- Between 2000 and 2003, the former Department of Infrastructure (which had responsibility for the EES process at the time) led a comprehensive review of the EE Act, which also included public consultation. The review recommended comprehensive legislative reform of the EES process. The government responded by revising the Ministerial Guidelines in 2006.
- In 2008, the government asked the then Victorian Competition and Efficiency Commission to conduct a review of environmental regulation. It proposed legislative changes to the EES process to reduce uncertainty, time frames and costs to business. The government responded by committing to a detailed review of the EES process.
- In 2010, the Victorian Parliamentary Environment and Natural Resources Committee conducted this review as an inquiry. In September 2011, it tabled its report *Inquiry into the Environment Effects Statement Process in Victoria*. The committee made 50 recommendations for comprehensive legislative reform of the EES process, and the government committed to reforming the EES process.

The two reviews and the committee inquiry each concluded that the EES process lacked clarity and transparency, and was costly. Despite successive governments committing to legislative reform of the EE Act, the legislation remains largely unchanged.

1.7 Why this audit is important

Planning and development are essential to meet the changing needs of the growing Victorian population. At the same time, development has the potential to impact on the environment, communities and the economy. It is important to balance environmental protection and community needs with cost-effective planning and development. In Victoria the EES process has a central role in getting that balance right.

An ineffective EES process has multiple implications, including a negative impact on the environment. If the process lacks certainty, it could deter development. If the process is not timely, it could create financial and emotional stress for affected communities and local councils, and increased project costs for proponents.

Although the minister makes most of the decisions on the EES process, the department has a key role in interpreting the Ministerial Guidelines, providing advice to the minister, and coordinating the EES process in a timely, transparent and integrated way.

This audit provides an opportunity to assess the EES process and the extent to which it is being managed effectively within the current legislative context.

1.8 What this audit examined and how

We aimed to determine if the department is effectively managing Victoria's EES process by assessing whether:

- projects with potentially significant environmental effects are being appropriately referred and considered for an EES
- processes to support the scoping, preparation, inquiry and assessment stages of the EES process meet legislative and ministerial requirements
- the conclusions, findings and recommendations of the Minister's Assessments are effectively monitored
- reforms to the EES process recommended by the 2011 Parliamentary inquiry have been implemented.

We examined departmental records and advice provided. We also conducted interviews with former and current proponents and consultants, and with former and current TRG members.

We limited our examination of projects to those that had EES referral decisions made after the Parliamentary report into the EES process was published in September 2011. Appendix B lists the projects included in the audit scope.

We conducted this audit in accordance with section 15 of the *Audit Act 1994* and the Australian Auditing and Assurance Standards. The total cost of this audit was \$525 000.

1.9 Report structure

The remainder of this report is structured as follows:

- Part 2 examines the EES reform process and assesses the department's role in progressing reform of the EE Act and its efforts to improve internal processes for managing the EES process
 - Part 3 examines the department's management of the referral, scoping and preparation stages of the EES process
 - Part 4 examines whether the department is effectively managing the public review stage of the EES process, including efforts to enable effective public participation.
-

2 Improving the Environmental Effects Statement process

Since the 1980s, international understanding of how to best assess and mitigate the environmental impacts of development projects has changed significantly. International principles for good practice promote environmental impact assessment processes that are integrated, transparent, flexible and cost-effective. They also encourage opportunities for interested parties to participate.

Victoria's *Environment Effects Act 1978* (EE Act) has not undergone any substantial change since it first came into effect. Since 2006 the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (Ministerial Guidelines) have been the main source of guidance for the requirements of the EE Act and the Environmental Effects Statement (EES) process.

This Part of the report examines the effectiveness of the Department of Environment, Land, Water and Planning (the department) in progressing reform of the EE Act, and its efforts to improve internal processes for managing the EES process.

2.1 Conclusion

Multiple reviews and inquiries have concluded that the current legislative framework does not ensure the effectiveness of the EES process. In response to recommendations, the department has provided sound advice to government for legislative reform to develop more efficient processes, reduce regulatory costs, and achieve better alignment with Commonwealth legislation and internationally recognised good practice.

The department has established a continuous improvement system that has increased consistency in the administration of the EES process. However, it does not systematically collect or assess information on the effectiveness and outcomes of its role in administering the EES process to enable it to further drive continuous improvement.

The Minister for Planning (the minister) can impose conditions on a project in lieu of an EES, and the department oversees the implementation of these conditions. However, the department has not established a comprehensive monitoring system to ensure the extent of compliance with the conditions is always documented and up to date.

2.2 Identifying the need for legislative reform

Since 2000, there have been two reviews and a Parliamentary inquiry focusing on the EE Act and EES processes. All concluded that the EES process:

- lacks certainty and effective accountability
- often takes too long and is too costly
- is not clearly linked to approval processes
- does not necessarily contribute to good environmental outcomes.

All recommended legislative reform aims to increase the transparency of decision-making, reduce time frames and duplication of work, and provide increased certainty for both proponents and communities.

International principles underlying good practice in environmental impact assessment encourage:

- integrated assessment of the likely effects of projects on communities, their surrounding environment and ecological systems
- transparent processes that are easily understood and ensure public access to information
- flexible processes that can be adjusted to the realities, issues and circumstances of the proposals under review without compromising the integrity of the process
- efficient, cost-effective, relevant and practical processes
- opportunities for participation by those interested and affected by projects and proposals
- systems to ensure the terms and conditions of approval are met
- systems to monitor the impacts of development and the effectiveness of mitigation strategies.

Appendix C compares Victoria's EE Act with environmental impact assessment legislation in Western Australia and at the Commonwealth level—two jurisdictions that closely model international good practice, according to the Victorian Parliament's Environment and Natural Resources Committee (the ENR committee). The most significant point of difference is that the outcomes of Victoria's EES process are not legally binding, whereas the outcomes of environmental impact assessments in Western Australia and the Commonwealth have legal force.

2.2.1 Reforms—2002 to 2006

In 2000, the government announced a review into the EE Act and the associated public consultation processes. The review was led by the former Department of Infrastructure (which had responsibility for the EES process at that time), and also included input from a ministerial advisory committee. Both the advisory committee and the Department of Infrastructure proposed comprehensive reform of the legislation.

In 2005 minor amendments were made to the EE Act. The majority of the reforms were incorporated in a revised version of the Ministerial Guidelines in 2006.

Legislative reform

In 2005, the government introduced amendments to the EE Act. These amendments did not substantially change the core legislation as proposed, but did introduce greater flexibility.

Specifically, the EE Act was amended to enable the minister to set conditions in lieu of proceeding with a full EES. If the project proponent fails to meet the conditions, the legislation authorises the minister to direct the proponent to prepare an EES.

The amendments also include greater detail on the administration of the EE Act and the referrals process. Following the changes, under the Ministerial Guidelines the minister is required to specify the procedures and requirements that are to apply to an EES for the project.

Ministerial Guidelines

The 2006 Ministerial Guidelines gave effect to most of the reforms proposed by the advisory committee. The Ministerial Guidelines are publicly available and contain information directed to the minister, the department, proponents and stakeholders, including:

- a statement of the objectives and principles underpinning the EES process
- the criteria for EES referral
- details of the EES process—referral, scoping, preparation and public review
- the information typically expected to be included in an EES
- coordination of the EES process with other statutory approvals and options for flexibility.

The Ministerial Guidelines can be altered at the discretion of the minister.

2.2.2 Reforms—2008 to 2014

From 2008 to 2014, successive governments revived efforts to reform the EES process in an effort to reduce administrative obstacles associated with environmental regulation.

Victorian Competition and Efficiency Commission inquiry

In July 2008, the government asked the Victorian Competition and Efficiency Commission (VCEC) to examine Victoria's environmental regulations and identify opportunities to improve efficiency while maintaining or strengthening the government's environmental objectives.

In 2009, VCEC released its report *A Sustainable Future for Victoria: Getting Environmental Regulation Right* (the VCEC report).

Although the EES process was not the sole focus of VCEC's inquiry, the VCEC report dedicated a chapter to the EES process. VCEC recommended a number of legislative changes to the EES process to reduce uncertainty, time frames and costs to business:

- incorporating clear risk-based criteria in the EE Act to guide decisions on the form of environmental assessment
- adopting a legislated tiered assessment process to accommodate less complex and lower-risk projects
- establishing negotiated, project-specific time limits for each stage of the EES process, and establishing a framework for reporting the department's performance against these time limits
- encouraging the alignment of project approvals under other legislation with EES outcomes
- establishing the role of the Coordinator-General of Major Projects to improve whole-of-government coordination, and to ensure that technical reference groups function more efficiently
- promoting the use, and recognising the input, of strategic assessments in the EES process.

Based on VCEC's early findings, the government asked the ENR committee to hold an inquiry into the EES process. The ENR committee's inquiry had started by the time VCEC's report was released. The government committed to evaluating the EES process in more depth in response to the EES section of VCEC's report.

Parliamentary inquiry

On 29 July 2009, Parliament asked the ENR committee to conduct an inquiry into the EES process. The inquiry was not completed before the end of the 56th Parliament, but the incoming government recommended the ENR committee continue the inquiry in the 57th Parliament. On 30 August 2011, the ENR committee tabled its report.

The ENR committee's findings were consistent with the VCEC report. It identified that the EE Act lacked detail, which created ambiguity and uncertainty. It made 50 recommendations and proposed extensive legislative reform to address:

- the lack of detail in the EE Act and the uncertain status of the Ministerial Guidelines
- the non-binding nature of the minister's recommendations and conditions
- the lack of certainty about when an EES is required and the level of detail involved in its preparation
- the length of the process and the potential for project delays
- barriers to public participation
- the need for more robust monitoring and auditing arrangements.

Government response

Successive governments have accepted the findings of these reviews and inquiries, and have committed to reforming the EE Act with the aim of:

- avoiding duplication of assessment and regulation between the Commonwealth and Victorian legislation
- reducing the widening gap between the EES process under the EE Act and international principles of good practice for environmental impact assessment.

In 2012, the government at the time responded to the ENR committee's recommendations and committed to reviewing the legislation, taking into account the findings in the report. It identified three priorities in driving legislative reform:

- protecting Victoria's environment
- strengthening the efficiency, time lines and certainty of the EES process in order to reduce the regulatory burden on business and encourage investment
- ensuring the transparency, accountability and fairness of relevant processes.

2.2.3 Departmental advice on legislative reform

Following the government's response to the ENR committee's recommendations, the then Department of Planning and Community Development (DPCD) prepared a detailed policy proposal for reform that was consistent with the objectives and specific elements of the government's reform agenda.

DPCD provided sound advice to government on reform to the EE Act, based on research, technical advice, and extensive consultation with the community and other government departments. Its advice also considered both the ENR committee and VCEC reports.

DPCD estimated that the proposed reforms to the EES process could deliver approximately \$16 million in administrative savings per year, primarily through reducing costs arising from delays. At the time, the reforms would have required an additional \$785 000 per year in departmental costs, and \$500 000 for start-up costs. The proposed reforms included mechanisms for cost recovery to ensure the reforms could be implemented without additional funding.

According to DPCD, the reforms would have positive social, environmental and economic impacts, specifically:

- more efficient processes, reducing both direct administrative costs and potential for delays
- reduced overall regulatory costs
- better alignment with requirements under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
- clarity, certainty, transparency and accountability for all stakeholders.

DPCD identified strong stakeholder consensus that the current EES process was overdue for reform. It anticipated that reform would be supported by industry, professional and environmental groups. It also expected that failure to reform would generate a high degree of frustration among stakeholders.

DPCD provided the government with options for legislative reform, including risks and benefits. The government agreed to the detailed policy reforms that DPCD had presented, and committed to developing:

- a reformed environmental impact assessment system including necessary legislative changes
- a suite of fit-for-purpose environmental impact assessment options with clear procedures and time frames.

The government also committed to considering:

- opportunities to streamline the relationship between the environmental impact assessment process and subsequent approval decisions
- a provision to enable the assessment of strategic proposals that would establish a streamlined basis for planning and assessment of individual projects.

At the government's request, DPCD prepared detailed drafting instructions for the Environmental Assessment Reform Bill 2013. Between October 2012 and October 2013, DPCD conducted further consultations.

However, the government decided not to proceed with implementing the proposed reforms.

There is currently no further work underway to reform the EE Act or EES process. In its briefs to the incoming government from late 2014 to early 2015, the department with responsibility for planning—which by then was the Department of Environment, Land, Water and Planning—identified reform of the EES legislation as one of several potential strategic opportunities for the government.

However, during our audit, the department advised that the current EES process provides value to the state, proponents and the community, and there appears to be no proposal within government for legislative reform of the EES process.

2.3 Internal improvements to processes

International principles for good practice in environmental impact assessment include monitoring and evaluation against certain criteria. Aspects of the assessment that need to be monitored and evaluated include:

- the terms and conditions of recommendations
- the effectiveness of mitigation measures
- the process used to optimise environmental management.

The EE Act does not prescribe a monitoring or compliance framework. Under the EE Act, the minister's recommendations are not binding on proponents or other statutory decision-makers, and there are no penalties for proponents who fail to follow them.

The VCEC and ENR committee inquiries both found the EE Act and EES process require significant reform.

As already noted, the legislative reforms have not been made, but this does not preclude the department from exploring ways to improve its administration of the EES process.

The department has demonstrated a commitment to improving the administration of the EES process. The consistency of the process has improved, along with the clarity of specific components of the EES process for both the department and proponents.

2.3.1 Internal reform program

In 2013, the relevant business unit within DPCD started an internal reform program. The program aimed to improve DPCD's processes for managing the EE Act and the *Major Transport Project Facilitation Act 2009*. The *Major Transport Project Facilitation Act 2009* consolidates multiple environmental, planning and heritage approvals into a single assessment and approval process for major transport projects, so that projects of this type will not need to be referred under the EE Act.

DPCD contracted an external expert to review the internal EES processes. According to the department, this review was not triggered by any specific incident or internal review, but aimed to embed continuous improvement and good practice.

The 2013 review identified a need for a documented quality management system (QMS), as defined in Figure 2A. The aim of the QMS would be to improve the consistency of administration of the EES process, provide a culture of continuous improvement, and develop effective processes for communication and feedback.

In response to this advice, DPCD engaged a specialist to develop a QMS between 2013 and 2014. The QMS was designed to be consistent with the Australian standard, AS/NZS ISO 9001:2016. In 2015, the department rolled out the new QMS.

Figure 2A

What is a quality management system?

A QMS is a documented set of policies, processes and procedures for planning and delivering an organisation's core business.

QMSs are common throughout all industry sectors, and they enable organisations to identify, measure, control and improve their core business processes, and improve business performance.

In Australia, QMS requirements are defined by AS/NZS ISO 9001:2016.

Source: VAGO.

2.3.2 The department's quality management system

The introduction of the QMS provided departmental staff with documented processes for all stages of the EES process. The QMS includes decision-making process maps and templates for key documents, such as terms of reference for inquiries, ministerial briefs and Minister's Assessments.

The QMS has successfully improved the department's administration of the EES process. The stakeholders consulted as part of the audit also stated that management of the EES process has improved since the QMS was introduced, particularly the consistency of the process.

The QMS provides:

- greater certainty for proponents and others
- continuity in the EES process, particularly when staff move on
- a valuable basis for training new starters in the department.

When departmental staff identify issues or errors, QMS documents are updated on an as-needed basis. At the time of our audit, the department's continuous improvement register contained 24 items under review. Of the 12 that were rated as 'high priority', eight were in progress and four had been completed.

The QMS also has inbuilt review dates, but the department has not met these review dates since the QMS was rolled out in mid-2015. The department has not adopted a systematic approach to its review of QMS documents, and therefore cannot be assured its internal processes are current and meet the needs of the EES process.

2.3.3 Evaluating and improving the Environmental Effects Statement process

The ministerial assessment produced at the conclusion of the EES process contains recommendations for the proponent and statutory decision-makers. These recommendations aim to improve the environmental outcomes of the project.

The department needs to know if the minister's recommendations are being followed before it can provide advice on whether the process is effectively mitigating environmental risk. Gathering data on the extent of implementation would also help the department advise the minister on whether legislative or procedural reform is required to achieve desired environmental outcomes.

The department follows up on the adoption of Minister's Assessments and engages with decision-makers about their implementation of specific recommendations. The department relies on this information from decision-makers and proponents to enable it to understand whether and how recommendations are being followed.

Apart from this follow up, there is currently no other mechanism to assess whether the recommendations made by the minister in the Minister's Assessment have been adopted. As a result there is no available data to enable evaluation of the impact or effectiveness of the EES process and to help focus continuous improvement.

A continuous improvement approach would require a system-wide view of each step of the EES process from beginning to end. A less resource-intensive alternative for assessing the effectiveness of the EES process would be for the department to conduct targeted sampling and analysis of information on the adoption and implementation of recommendations resulting from the Minister's Assessment.

The department has adopted a continuous improvement approach to its central monitoring of the EES. The department distinguishes between its central role in monitoring conditions imposed by the minister in lieu of a full EES and the role of various statutory decision-makers who provide authority under specific legislation to a proponent for individual components of a project to proceed.

The department needs to develop a more comprehensive monitoring framework that assigns the obligation of self-reporting to statutory decision-makers and proponents. This would enable it to receive, collate, evaluate and report to the minister on several aspects of this stream of the process.

The Ministerial Guidelines would need to be revised to incorporate self-reporting. The obligation for self-reporting could include key elements such as:

- consideration of the Ministerial Guidelines
- the applicable statutory provisions
- applications made by proponents
- approvals issued against these applications
- enforcement activities taken against proponents for noncompliance with statutory provisions and conditions attached to approvals.

2.3.4 Monitoring of conditions in lieu of an Environmental Effects Statement

When assessing if a proposal requires an EES to be prepared, the minister can decide that an EES is not required if the proponent meets certain conditions. These conditions vary from project to project but typically require the proponent to develop a strategy, plan or assessment report on specific environmental matters.

Conditions may require proponents to consult specific departments, local councils or authorities when preparing these documents. Conditions may also specify the person or entity that proponents must satisfy in meeting these conditions, which may be a department, department secretary or minister.

If the proponent does not meet the conditions, the EE Act permits the minister to require the proponent to prepare an EES. For the minister to exercise this power, the department needs to be able to track progress on compliance with the conditions imposed.

The department currently tracks the status of conditions by entering information into a spreadsheet as it is supplied by proponents and statutory decision-makers. The department provided examples of projects where it had verified compliance with conditions and some review activity.

Unlike other stages of the EES process, the QMS does not provide guidance on the monitoring of conditions. The department has processes for monitoring conditions, but these are not set out in detail in the QMS. The department relies on the initiative of individuals in the department to follow up on conditions.

The department also relies on the initiative of proponents and other statutory decision-makers to inform the department of any developments relating to noncompliance.

Although the department has oversight of the implementation of conditions set in lieu of an EES, it does not have a comprehensive system for its oversight of these conditions. The department cannot be assured that its current processes can accurately monitor the extent of compliance and report accordingly.

In its advice to the government on reforming the EE Act, the department proposed strategies for addressing noncompliance with conditions through the EES process. The government did not reform the legislation and the recommended penalties for noncompliance were not introduced.



3 Referral, scoping and preparation

The referral, scoping and preparation stages are key points in the Environmental Effects Statement (EES) process. These stages not only determine which projects will be subject to an EES, but also the environmental impacts to be investigated and the depth of the investigation.

International principles of good practice state that an environmental impact assessment process, such as Victoria's EES, should be practicable, transparent, adaptable and rigorous. A process that meets these principles reduces costs to industry and the community. It also provides the transparency and certainty that local communities and businesses need when meeting the challenges and opportunities that development projects present.

This Part examines how effectively the Department of Environment, Land, Water and Planning (the department) manages the referral, scoping and preparation stages of the EES process.

3.1 Conclusion

The nature of the referral criteria and the lack of a legislative definition in the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (Ministerial Guidelines), makes it difficult to establish an effective regime for project referral. With no penalties for not referring projects, the EES process relies on ethical practices of project developers and the effectiveness of the networks the department has in place.

When projects are referred, the department provides evidence-based advice to the minister to support decision-making in the EES process.

Proponents we interviewed have advised us that greater clarity in determining the type, depth and method of EES investigations arising from interpretation of the Ministerial Guidelines would assist them during EES scoping and preparation. The risk of additional costs and delays for both proponents and the department could be better mitigated if greater clarity was able to be achieved.

3.2 Referring projects

Unlike the environmental impact assessment processes used by the Commonwealth and Western Australian governments, Victoria has no legislative criteria for:

- the type of project that requires an EES
- what constitutes a 'significant effect' on the environment.

In its advice to government on reforms to the *Environment Effects Act 1978* (EE Act), the department identified that the legislation needed to clarify the circumstances in which projects should be referred to the minister. The department proposed including a general statement in the legislation outlining the criteria and relevant matters that should trigger an EES.

It proposed adding a component to the Ministerial Guidelines that defined more specific criteria and project types. It suggested that the instrument could provide certainty but also have flexibility to allow the criteria to be modified to suit changing circumstances.

The government did not introduce these proposed reforms and, in the absence of statutory guidance on which projects should be referred to the minister for a decision, the department relies on the referral criteria outlined in the Ministerial Guidelines.

Although statutory bodies and other ministers can refer projects to the minister for an EES decision, in practice, almost all projects are referred by proponents.

The minister is authorised to direct a decision-maker to refer a project that has not yet been referred, but we found no instances of this occurring since September 2011.

3.2.1 Consultation prior to referral

The Ministerial Guidelines note that proponents can seek advice from the secretary of the department on whether they need to refer their project. In practice, proponents consult with the department's Impact Assessment Unit (IAU) before submitting a referral.

Consulting with the IAU before referring a project helps proponents to be more certain about whether their projects are likely to need to be referred. It also enables the department to limit unnecessary referrals.

Although this consultation is not a formal stage in the EES process, it is important that the department provides accurate advice to proponents, as they rely on this advice when considering whether or not to refer their projects.

Since the 2011 Parliamentary inquiry into the EES process, pre-referral consultations with the department have been held for 56 projects. Of these projects, the department provided advice for 20 projects on whether or not a referral was required:

- in seven instances the department advised that a referral was required
- in 10 instances the department advised the project did not require a referral
- for three projects the department advised that the proponent had the option to refer if they wanted, depending on other approvals the proponent was seeking.

Proponents and stakeholders of the other 36 projects used pre-referral consultations to begin initial discussions about projects with the department, obtain information about the EES process, seek feedback on their self-assessments against the referral criteria in the Ministerial Guidelines, and obtain advice on draft referrals.

In five of the 56 projects, the department advised the proponent to address information gaps before deciding whether or not to refer the project.

The department has comprehensive processes and documented guidelines in its quality management system (QMS) to enable it to provide consistent and accurate advice to proponents during consultations. The department centrally documents its contact with proponents and the advice it provides to them, to give department staff consistent knowledge of projects.

Departmental staff seek relevant information to provide advice. They meet with proponents and seek additional documentation and information when they need further clarity.

3.2.2 Referral process

The EE Act applies to any projects in Victoria that the minister believes may have a significant environmental effect at the regional or state level. These projects can differ in size, scale and complexity. The Ministerial Guidelines outline 22 referral criteria for the EES process, tied to the concept of significant environmental effects, as defined in the Ministerial Guidelines.

The department currently has no mechanism to verify that all projects meeting the referral criteria are referred for an EES decision. In 2012, the department's advice to government on the proposed reforms to the EE Act proposed that the legislation specify the type of projects that should have an EES prepared in order to help it monitor compliance. This proposal was not implemented by the government.

Under the EE Act, there are no penalties or consequences for proponents or decision-makers who fail to refer projects to the minister for an EES decision. The EE Act states that proponents of works that could have a significant effect on the environment 'may' seek the advice of the minister on whether an EES should be prepared. The absence of a legislative definition and the subjective nature of the referral criteria in the Ministerial Guidelines mean that establishing an effective regime for monitoring project referral is difficult. It is also not practical with the resources currently available.

The department advised that instead it relies on its networks with other departments and with the planning and environmental impact assessment industry to stay aware of upcoming projects that may meet the EES referral criteria.

3.2.3 Advice to the minister

Within the context of the current legislation, the department provides sound, evidence-based advice to the minister to support decision-making on whether an EES is required. The advice is guided by the criteria in the Ministerial Guidelines.

The department provides options for decisions and the risks associated with each option to ensure the minister is informed when deciding if a project:

- requires an EES
- does not require an EES as long as it meets specific conditions
- does not require an EES.

The Ministerial Guidelines contain details of the information proponents should provide to assist the decision-making process. The details required include:

- general information on the project, including proposed site, any alternatives the proponent is considering, other required statutory approvals, project time frames and stages
- preliminary environmental information, including an overview of the existing environment, potential effects of the project, proposed mitigation measures and any known activity in the area that would contribute to a cumulative effect
- an environmental study program, including any environmental studies already conducted as well as any proposed future studies
- a consultation plan, detailing any consultation already conducted with stakeholders as well as planned future consultation.

The department reviews the information submitted by the proponent. When necessary, it seeks expert external advice to validate the information provided. The department also requests more information from the proponent if the original submission lacks sufficient or critical details. These actions help the department gain adequate and accurate information for providing advice to the minister.

The department has documented processes in its QMS that inform staff of the specific steps they must take when processing referrals and providing advice to the minister. These processes are consistent with the Ministerial Guidelines.

The Ministerial Guidelines outline the referral criteria that the minister must consider when making a decision on an EES referral, as shown in Figure 3A. To support its advice to the minister, the department provides an assessment of the project against the criteria.

Figure 3A
Referral criteria for an EES for the minister to consider

- When deciding whether an EES is required, according to the Ministerial Guidelines, the minister must consider the extent to which the project is capable of having a significant effect on the environment in terms of:
- the potential for significant adverse effects on individual environmental assets, taking into account the magnitude, geographic extent and duration of change in the values of each asset
 - the likelihood of effective avoidance and mitigation measures
 - the likelihood of adverse effects and associated uncertainty of available predictions
 - the likelihood that available environmental standards provide a sufficient basis for managing key issues
 - the likelihood that the project is not consistent with applicable policy
 - the range and complexity of potential adverse effects
 - the availability of project alternatives that may warrant investigation to assess opportunities to avoid or minimise adverse environmental effects
 - other available assessment processes that may be suitable to address potential environmental effects
 - the likely level of public interest in a proposed project.

Source: VAGO based on the *Ministerial Guidelines for Assessment of Environmental Effect under the Environment Effects Act 1978*.

3.2.4 Conditions in lieu of an Environmental Effects Statement

Legislative reform in 2005 introduced an option for the minister to set conditions in lieu of the proponent having to prepare an EES. The EE Act is not specific about the type of conditions that can be set. The Ministerial Guidelines provide clarification, and include the ability to specify the particular form, scale and location of a development, and whether mitigation measures are required to address a specific impact.

Proponents and TRG members we interviewed have advised us that this element of the EES process could be improved by providing greater detail on the method used to determine whether the conditions have been satisfied.

3.3 Establishing scoping requirements

To help the minister establish the scoping requirements, project proponents must provide information including a preliminary list of issues and a draft study program that outlines proposed EES investigations. The EES Act does not contain penalties for providing misleading or inaccurate information during the EES process.

To ensure the development of technically sound scoping requirements, the department needs thorough and reliable processes to guide proponents to provide accurate and sufficient information.

The department has well-documented processes in its QMS for gathering evidence to develop scoping requirements. It follows these processes consistently.

The department's internal processes contain several measures to ensure that EES scopes are based on accurate information:

- having affected local councils and subject matter experts examine the information provided by the proponent
- releasing the draft scope for public comment so that interested members of the public can check that all pertinent information has been considered
- having the department and the minister scrutinise the draft scope.

The department seeks advice from members of the technical reference group (TRG) for each project. Through a process of consultation and discussion, the department, the proponent and the TRG review the scoping information provided by the proponent to ensure it explores all potentially significant environmental effects.

Our examination of departmental records shows that the department follows its documented processes. Our discussions with current and former proponents and TRG members also supported this finding.

3.3.1 Advice to proponents

When providing information to the department for scoping purposes, proponents rely on information in the Ministerial Guidelines and any verbal advice the department offers.

The department has not clarified the level of detail it expects from proponents to support scoping. This has implications for inexperienced private and government proponents—without detail about the information proponents need to provide, it can be difficult for them to accurately cost and schedule their planning process. It can also lead to delays and confusion when proponents provide insufficient information and need to repeatedly seek clarification on what is required.

The department advised that it communicates to proponents undertaking the EES through:

- the published Ministerial Guidelines
- the department's draft and final scoping requirements
- ongoing engagement with the TRG and the department.

The department has comprehensive internal guidelines on the information it requires proponents to provide. These are documented in its QMS. The department advised that the purpose of the internal guidelines is specifically to help staff provide consistent information to proponents.

The department does not provide this detail to proponents in any other form. To make the scoping process more transparent and increase efficiency in the process, the department needs to give guidelines to proponents on EES scoping. This will help them understand the department's specific requirements and potentially minimise delays in the process.

Figure 3B provides an overview of internal guidelines the department uses to determine the information that proponents need to provide before scoping can begin.

Figure 3B
Information required for EES scoping

Document	Details
Project description	<p>The project description:</p> <ul style="list-style-type: none"> • confirms the objectives and proposed maximum extent of proposed development • identifies any 'off-site' works that are outside the core project components • explains the interdependence of project components.
Preliminary hazard assessment	<p>This assessment helps identify the issues the EES will investigate and informs development of the draft study program by:</p> <ul style="list-style-type: none"> • providing greater assurance that all potential hazards have been identified • promoting efficiency by identifying the key risks and uncertainties at an early stage. <p>The content should be guided by key environmental settings and the interactions between the project components and activities and the existing environment.</p>
Preliminary list of issues	<p>A preliminary list of issues is included in the study program and should consider:</p> <ul style="list-style-type: none"> • the minister's referral decision and procedures under section 8B of the EE Act • key approvals requirements under other legislation.
Draft study program	<p>The draft study program outlines proposed EES investigations (scope, general methodological approach, and any relationship between studies) and should take into account the outcomes of:</p> <ul style="list-style-type: none"> • technical studies that have been undertaken to date • preliminary stakeholder feedback on key issues. <p>The draft study program also outlines the proponent's approach to preparing the EES and includes dates for when EES chapters will be submitted to the department and how the report will be finalised for exhibition.</p>
Draft consultation plan	<p>The draft consultation plan sets out the measures that the proponent will undertake to:</p> <ul style="list-style-type: none"> • inform the public about the project and EES investigation program • obtain input from and engage with stakeholders during the preparation of the EES • respond to stakeholder input. <p>The plan differentiates between:</p> <ul style="list-style-type: none"> • broad consultation • targeted consultation to inform EES studies, such as local information on existing conditions and views about potential effects. <p>The plan may be modified throughout the EES process as consultation requirements evolve and technical studies inform better assessment of risks.</p>
Preliminary list of stakeholder issues	<p>The preliminary list is a summary that identifies concerns of stakeholder groups linked to possible effects and issues arising from the project.</p>

Source: VAGO based on information from the Department of Environment, Land, Water and Planning.

3.3.2 Risk-based scoping

For projects that require an EES, the Ministerial Guidelines state that scoping requirements and EES documentation should be prepared using the principles of a systems approach and taking a proportionate approach to risk.

The EES scope requires a level of investigation proportionate to the risk the project poses to the environment. If the scope is too narrow, critical aspects of the environmental impact could be left unexamined. If the scope is too broad, there is a risk that the resources of both the proponent and the department will be wasted on investigating aspects of the project that are unlikely to have a significant environmental impact. This can also lead to a lengthy EES process that creates uncertainty for communities and proponents for long periods.

The department advised that proponents should therefore take a risk-based approach in their study design when responding to the scope of matters the minister has set for the development of an EES for their project.

The department's role is to draft the scope of matters for consideration and then to review the proponent's response.

Ultimately, the proponent is responsible for the quality of the EES and ensuring that it has adopted a risk-based approach to investigating the environmental effects that may arise. However, the department exercises considerable influence during the drafting of the proposed scope, and it needs to provide greater clarity to proponents on their role and responsibilities, and those of the department, in this process.

3.4 Coordinating and administering technical references groups

The department is coordinating and administering TRGs effectively. To improve the timeliness of the process, the department should increase its engagement with TRG members to ensure they are meeting expectations and fulfilling their responsibilities in a timely way.

3.4.1 Appropriate representation

The department's approach to establishing TRGs is soundly based, and usually results in representation from appropriate departments, agencies and councils. When initially establishing a TRG, the department invites participants from any department, agency or council that has a potential interest in the project. This broad approach is warranted at the early stage of scoping, to ensure all relevant environmental impacts are considered. TRGs typically have 10 to 25 members.

There is scope for the department to improve its approach to establishing TRGs by working with agencies to secure members who have subject matter and procedural expertise, and the appropriate level of delegation to represent their organisation.

Inappropriate representation on a TRG can result in project delays and extra costs for several reasons:

- TRG representatives can lack appropriate knowledge or experience in the subject matter under discussion and as a result cannot always effectively represent their agency's views.
- Proponents rely on TRG meetings and written comments to get agency input into their EES study program. If a representative cannot provide input (either at a meeting or in writing), delays may result from having to approach that agency separately or secure an alternative meeting date.
- Confusion and delays can be caused by inexperienced TRG representatives agreeing to plans, only to have this agreement overturned by more senior personnel following the meeting.

The department advised that delays can also occur due to proponents not providing adequate information.

3.4.2 Coordinating the technical reference group

During drafting of the EES, the department coordinates comments from TRG members and feedback on draft chapters. Depending on the complexity of the project, the department can also take a more direct role in collating and reconciling comments from TRG members.

The department's coordination of feedback has been broadly effective, although we found that the quality of feedback from TRG members on draft EESs has been variable. Feedback ranges from useful and actionable comments or requests, through to rhetorical questions and unclear statements that do not provide adequate guidance for proponents.

All feedback should be timely and of appropriate quality. Poor-quality feedback and comments can result in delays and additional costs to proponents, who either seek additional guidance from TRG members or risk misinterpreting the comment. This in turn leads to additional pressures on the department's staff, who must facilitate further communication to resolve misunderstandings.

3.5 Preparing the Environmental Effects Statement

The proponent prepares the EES, and its content is determined by the scoping requirements set for each project by the minister.

The department is accountable to the minister for managing the process to help proponents prepare a sound EES that adequately responds to the scoping requirements. To fulfil this obligation, the department provides comments on draft EES chapters and specialist reports, along with comments and feedback received from the TRG. For some projects, the department also plays a more direct role in collating and reconciling technical comments from TRG agencies.

The department provides a consistent and high level of support to proponents during EES preparation. Its role in supporting proponents is to ensure a sound process is established and followed, and to ensure the EES is of a suitable standard and quality for publication.

The department has documented processes to guide its support to proponents during EES preparation, which are consistent with the Ministerial Guidelines. Our examination of department files indicates the department consistently applies its processes.

The department advised that the relevant statutory decision-makers usually consult the department to help them interpret the assessment findings and provide guidance on how this should inform approval decisions and conditions.

4 Inquiries and public participation

Public review and participation are essential elements of a robust Environmental Effects Statement (EES) process. Community engagement and understanding of the process are important in contributing to an effective, credible and transparent environmental impact assessment framework. When carried out effectively, public participation can:

- ensure local community concerns are considered as part of the process
- assure stakeholders that potentially significant effects are not overlooked, by capturing local knowledge of the environment
- increase transparency by subjecting the EES to public scrutiny.

This Part of the report examines how effectively the Department of Environment, Land, Water and Planning (the department) manages the public review stage of the EES process, including efforts to enable effective public participation in the process.

4.1 Conclusion

During the scoping stage of the EES process, the department manages the public consultation process in line with the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (Ministerial Guidelines).

In the public review stage, all projects we examined conducted reviews through an 'inquiry by formal hearing'. In formal hearings, common wording in the terms of reference for inquiries is 'a minimum of formality' and no requirements for legal representation. Yet proponents in all projects in the audit scope had legal representation, which created a perception of disadvantage for those who did not have representation.

Under the Ministerial Guidelines, when the EES is released for public input, the department can choose from three inquiry and consultation options when advising the Minister for Planning (the minister) on its recommended approach. However, the department does not outline its reasoning for its recommendations and has recommended an inquiry by formal hearing over other inquiry options when advising the minister on the appropriate method of consultation.

4.2 Enabling public participation

Under the current legislative framework, the public is given the opportunity to provide input into the EES process at two stages:

- **Scoping**—the draft scope of an EES is released for public comment prior to its finalisation. The public is invited to make written submissions on the proposed scope, which are then considered by the department.
- **Public review**—the EES is released for public comment. If the minister requests an inquiry as part of the public review, the public can provide evidence or present submissions at the inquiry hearing. The terms of reference require the inquiry panel to consider public submissions when making their recommendations to the minister.

In the scoping stage of the EES process, public participation occurs solely through written submission, giving the community and other interested parties equal opportunity for participation. Although the 2011 Parliamentary report *Inquiry into the Environment Effects Statement Process in Victoria* suggested there could be additional times during the process for submissions to be made, there is no specific barrier to anyone providing a written submission at any time.

The department has advertised invitations for public comment on the draft scoping requirements for projects subject to the EES process in accordance with the Ministerial Guidelines. Internal department processes were followed and submissions were given due consideration.

Proponents also have a role in the public consultation component of the EES process. They are required to engage with the community and stakeholders during the EES investigations. The proponents' EES consultation plans are reviewed by the technical reference group and published at the start of the EES process.

4.3 Public review process

The Ministerial Guidelines provide a range of consultative options for the public review stage of an EES. These include:

- an inquiry by written submission
- an inquiry by submitter's conference
- an inquiry by formal hearing where proponents and submitters can present their cases and expert witnesses can be called.

We examined seven projects with referral decisions since September 2011 that have progressed to the public review stage. We found that public consultation occurred through inquiry by formal hearing in all cases. The department has not recommended the minister use the alternative consultation options to the formal hearing.

4.3.1 Appointment of panel members

Inquiry panel members are appointed by the Governor-in-Council, based on advice from Planning Panels Victoria (PPV). PPV prepares a brief outlining the names and qualifications of the proposed chair and inquiry panel members. Prospective panel members are drawn from a pool of members maintained by PPV.

Appointments to EES inquiries are in accordance with Department of Premier and Cabinet Appointment and Remuneration Guidelines. Probity checks are mandatory, and panel members must complete a Declaration of Private Interests to enable any conflicts of interest to be determined before their names are submitted to the minister.

4.3.2 Inquiry terms of reference

The inquiry terms of reference enable the panel to enquire into any aspects of the project they consider necessary. They also allow the panel to seek advice from experts as needed, including using the expertise of panel members themselves. The terms of reference directly refer to the areas of focus specified in the minister's EES decision.

The terms of reference for inquiry panels appointed for projects over the past five years have been drafted to enable the panel to ensure that potential significant environmental effects are examined with sufficient rigour.

Terms of reference for inquiries also include clauses that aim to encourage public input into the inquiry process, including:

- requiring the inquiry to consider public input
- requiring the inquiry to conduct a public hearing
- stating that hearings are to be conducted with minimal formality and without the need for legal representation
- restricting cross-examination and adversarial conduct
- requiring that parties without legal representation will not be disadvantaged.

Our audit found that of the seven projects that have had an inquiry by formal hearing, six of the inquiries' terms of reference were based on a template provided in the department's quality management system (QMS) documents, with content individualised to suit specific projects.

One project has more tailored terms of reference—the Melbourne Metro Rail Project (Metro Tunnel). The scope of the Metro Tunnel project includes five new underground stations, two of which are new city stations directly connected to Flinders Street and Melbourne Central. As identified in the 2011 Parliamentary inquiry, terms of reference for inquiries by formal hearing for high-profile projects that generate significant public interest have deviated from the QMS template.

The key differences included:

- removal of the clause in the template that requires the panel to ensure people appearing without legal representation are not disadvantaged
- an additional clause for the panel to limit the time allowed for presentations
- an additional clause for the panel to exclude attendees who behave inappropriately.

4.3.3 Barriers to public participation

There can be significant imbalances between proponents and community participants. In all projects within the audit scope, proponents had legal representation, and several proponents used the same representative. In contrast, members of the community were usually self-represented, seldom using a lawyer or other advocate. Legal representatives with expertise in planning law and EES inquiry panels have a marked advantage over members of the public when presenting their case at hearings.

In the public review stage, all projects in the audit scope conducted reviews through an inquiry by formal hearing. The department did not advise the minister to consider any other inquiry options available under the Ministerial Guidelines.

The intent of the hearings is a minimum of formality and no requirements for legal representation. Yet proponents in all projects had legal representation. One inquiry specifically addressed the concerns of submitters who felt disadvantaged by having no access to experts or legal representation. The inquiry panel denied a submitter's request, supported by other submitters, for an adjournment to review materials.

The independence, powers and knowledge of the panel members—who are often experts and experienced in conducting planning panel hearings—is intended to ensure that proponents do not unduly or falsely influence the proceedings. Despite this, the imbalance between proponents represented by lawyers and self-representing community members creates perceptions of unfairness.

4.3.4 Advice to the minister

The Ministerial Guidelines enable the department to recommend options to the minister that can reduce the formality of the EES inquiry stage. This aims to improve the ability of local communities and individuals to participate in inquiry processes and reduce perceptions of unfairness.

Although the Ministerial Guidelines provide the flexibility for the inquiry process to differ in depth and formality depending on the complexity of the project, we did not find significant differentiation in the variety of projects that we examined. For those projects, the department's consistent advice has been to recommend formal hearings. Less intensive options of inquiry by written submission or inquiry by submitter conference were not presented as options to the minister.

Appendix A.

Audit Act 1994 section 16— submissions and comments

We have professionally engaged with the Department of Environment, Land, Water and Planning throughout the course of the audit. In accordance with section 16(3) of the *Audit Act 1994* we provided a copy of this report to this agency, and requested its submissions and comments. We also provided a copy of the report to the Department of Premier and Cabinet.

Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

Department of Environment, Land, Water and Planning.....	36
Department of Premier and Cabinet	39

RESPONSE provided by the Secretary, Department of Environment, Land, Water and Planning



Department of Environment,
Land, Water & Planning

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Mr Andrew Greaves
Auditor-General
Level 24, 35 Collins Street
MELBOURNE VIC 3000

Ref: SEC012707

14 MAR 2017

Dear Mr Greaves

PERFORMANCE AUDIT - EFFECTIVENESS OF THE ENVIRONMENTAL EFFECTS STATEMENT PROCESS

Thank you for your letter dated 27 February 2017, enclosing the proposed report for the performance audit *Effectiveness of the Environmental Effects Statement (EES) Process* and inviting submissions for inclusion in the final report.

I am pleased to confirm the Department of Environment, Land, Water and Planning supports the recommendations from the audit. An action plan for how we will address the recommendations is attached.

I am confident that these actions will contribute positively to the continuous improvement approach already in place for the department's administration of the *Environment Effects Act 1978*, and in so doing will respond to stakeholder concerns about some key aspects of the EES process.

Thank you again for this opportunity.

Yours sincerely

Adam Fennessy
Secretary

Encl.



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RESPONSE provided by the Secretary, Department of Environment, Land, Water and Planning – continued

VAGO performance audit report – Effectiveness of the EES Process, March 2017

DELWP Action Plan

Rec#	VAGO RECOMMENDATION	DELWP proposed actions	Completion date
1.	DELWP review its position on whether legislative review of the Environment Effects Act 1978 and further reform of the Environmental Effects Statement process is required to meet the current needs of proponents and stakeholders.	DELWP will review whether reform of the <i>Environment Effects Act 1978</i> and/or Ministerial Guidelines on the EES process is required to meet the current needs of proponents and stakeholders.	April 2018
2.	DELWP systematically review its internal Environmental Effects Statement guidance documents in its quality management system (QMS) and update them as required.	DELWP will establish an internal continuous improvement group in the Unit, with the key role of developing a review schedule and protocol to use in the systematic review of the QMS guidance documents and templates. DELWP will undertake systematic review of the QMS internal guidance documents and templates as per defined schedule/frequency.	July 2017 Ongoing.
3.	DELWP develop and implement a risk-based system to monitor and document compliance with conditions imposed in lieu of a full Environmental Effects Statement, to identify circumstances when an Environmental Effects Statement becomes necessary.	DELWP will develop internal guidance to be incorporated into the QMS on process for consistently monitoring and reporting compliance of conditions set in No EES decisions made under section 88(3)(b) of the Act. The system for documenting progress and compliance with conditions imposed under each decision would include proponent and/or statutory decision-maker reporting of compliance with conditions. DELWP will commence implementation of program of monitoring compliance with previous No EES conditions yet to be complied with.	October 2017 November 2017
4.	DELWP investigate, identify and implement an appropriate process for statutory decision-makers to report to the department their response to recommendations in the Minister's Assessment in their final decisions.	DELWP will develop internal guidance to be incorporated into the QMS to improve wording of recommendations in future Minister's Assessments, such that they include clear direction and onus for decision-makers to report to the department on implementation. DELWP will review whether revision of the Ministerial Guidelines is necessary to ensure the decision-makers report to the department on responses to and implementation of recommendations in Minister's Assessments.	July 2017 April 2018
5.	DELWP publish a guide on the inputs and level of detail required from proponents at the scoping stage of the Environmental Effects Statement process.	DELWP will prepare and publish an advisory note on the information required from the proponent to inform their preparation of inputs to the EES scoping stage.	May 2017

RESPONSE provided by the Secretary, Department of Environment, Land, Water and Planning – continued

VAGO performance audit report – Effectiveness of the EES Process, March 2017

Rec#	VAGO RECOMMENDATION	DELWP proposed actions	Completion date
6.	<p>DELWP develop scoping requirements for each Environmental Effects Statement that achieve a balance between:</p> <ul style="list-style-type: none"> • focusing on key potentially significant environmental effects • providing sufficient information on other environmental issues and effects to inform the efficient coordination of decisions for interfacing statutory processes. 	<p>DELWP will develop scoping requirements for future EESs to achieve a balance between focusing on key potential effects and providing sufficient information on other environmental issues and effects relevant to interfacing statutory decisions/ processes.</p>	<p>Ongoing - as required for each future project/EES.</p>
7.	<p>DELWP establish a process and seek agreement with relevant agencies participating in technical reference groups for securing individual reference group members with subject matter and procedural expertise, and the appropriate level of delegation to represent their organisation.</p>	<p>DELWP will develop a process and protocols for agencies participating in TRGs, to facilitate appropriate nominations and level of involvement in the EES process.</p> <p>DELWP will seek agreement on the process and protocols with relevant agencies regularly participating in technical reference groups.</p>	<p>July 2017</p> <p>August 2017</p>
8.	<p>DELWP outline its reasoning when providing advice to the Minister for Planning on inquiry options for the public review stage of the Environmental Effects Statement process.</p>	<p>DELWP will develop internal process guidance for inclusion in the QMS on providing the Minister with reasoning in support of any recommendation on the form/type of inquiry to use at the public review stage of each EES process.</p> <p>Amend briefing templates in QMS to encompass the reasoning and recommendation on the form of inquiry for public review stage for each EES process.</p>	<p>June 2017</p> <p>June 2017</p>

RESPONSE provided by the Secretary, Department of Premier and Cabinet



Department of
Premier and Cabinet

10 MAR 2017

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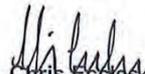
B17/1156

Dear Mr Greaves ^{Andrew}

Thank you for providing the proposed performance audit report *Effectiveness of the Environmental Effects Statement Process* in accordance with section 16 (3) of the *Audit Act 1994*.

I note that the audited department has had the opportunity to respond to the proposed report.

Yours sincerely


Chris Eccles
Secretary



Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



Appendix B.

Projects within audit scope

In this audit, we examined projects that had EES referral decisions made after the Parliamentary report into the EES process was published in September 2011, as listed in Figure B1.

Figure B1
Projects within audit scope

Decision date	Project name	Referral decision	Status/date of Minister's Assessment ^(a)
15 Feb 2016	Victorian Northern Interconnect Expansion Project (Loopings 6 and 7)	No EES with conditions	n/a
23 Dec 2015 ^(b)	Western Distributor Project	EES	Pending (EES under development)
22 Nov 2015	Garfield North Quarry	EES	EES process yet to commence
12 Oct 2015	Portarlinton Safe Harbour (Stage 1 Harbour Works)	No EES	n/a
9 Sep 2015 ^(b)	Melbourne Metro Rail Project	EES	Pending (EES to be exhibited shortly)
26 Aug 2015	Halladale and Speculant Pipeline Project	No EES	n/a
22 Jul 2015	Beaufort Bypass (Western Highway)	EES	EES process currently on hold
9 Mar 2015	Bulgana Wind Farm	No EES	n/a
4 Sep 2014	Barringhup West Broiler Farm Development	No EES	n/a
13 Oct 2014	Green Fields Station Hydroponics Precinct Project	No EES	n/a
30 Jun 2014	Victorian Northern Interconnect Expansion	No EES	n/a
7 May 2014	Esso Pipeline Replacement Project	No EES with conditions	n/a
28 Apr 2014	Bendigo Airport Redevelopment Project	No EES with conditions	n/a
11 Feb 2014	Water for a Growing West Pipeline Project	No EES	n/a
5 Feb 2014	Melbourne Airport Link to OMR and Bulla Bypass	No EES	n/a

Figure B1
Projects within audit scope – continued

Decision date	Project name	Referral decision	Status/date of Minister's Assessment ^(a)
10 Feb 2014	Ajax Road Industrial Subdivision	No EES	n/a
19 Dec 2013	Nowa Nowa Iron Project (5 Mile Deposit)	EES	EES process currently on hold
19 Dec 2013	Swan Hill Modernisation Project	No EES with conditions	n/a
16 Sep 2013	Unicorn Project (porphyry mining)	EES	EES process yet to commence
13 May 2013	Manzeene Village, Lara	No EES	n/a
14 Jun 2013	Second Murray River Crossing at Echuca-Moama (Mid-West 2 Corridor)	EES	March 2016
23 Apr 2013	Big Hill Enhanced Development Project	EES	October 2014
15 Apr 2013	Kilmore Wallan Bypass	EES	February 2015
5 Apr 2013	Ravenhall Prison	No EES with conditions	n/a
21 Jan 2013	Geelong Salt Fields Urban Renewal Project	EES	EES process yet to commence
21 Jan 2013	Dundonnell Wind Farm	EES	February 2016
13 Nov 2012	Western Port Highway Upgrade—South Gippsland Freeway to South of Cranbourne-Frankston Road	No EES with conditions	n/a
28 Jun 2012	Burnside Residential Development	No EES with conditions	n/a
20 Apr 2012	Gunbower Forest Environmental Watering Project	No EES with conditions	n/a
23 Dec 2011	WIM150 Mineral Sands	EES	EES is being prepared
21 Nov 2011	Tarrone Wind Farm	No EES with conditions	n/a
15 Sep 2011	Dingley Bypass—Warrigal Road to Westall Road	No EES	n/a
30 Sep 2011	Pinniger Tourism and Leisure Development	EES	EES process yet to commence
16 Aug 2010 ^(c)	Stockman Base Metals Project	EES	October 2014
13 Nov 2009 ^(c)	Palmers Road Corridor Project	EES	March 2016

(a) Only for projects where an EES was required.

(b) Public Works declaration under Section 3, *Environment Effects Act 1978*.

(c) Included within the scope as preparation of EES occurred after September 2011.

Note: Status of projects is current as of 12 September 2016.

Source: VAGO.

Appendix C.

Environmental impact assessment in other jurisdictions

We compared Victoria's *Environment Effects Act 1978* with environmental impact assessment (EIA) legislation in Western Australia and at the Commonwealth level, as shown in Figure C1.

These jurisdictions closely model international good practice, according to the Victorian Parliament's Environment and Natural Resources Committee.

Figure C1
Environmental impact assessment—Victoria, Western Australia and Commonwealth

Feature of environmental impact assessment process	Victoria— <i>Environment Effects Act 1978</i>	Western Australia— <i>Environmental Protection Act 1986</i>	Commonwealth— <i>Environment Protection and Biodiversity Conservation Act 1999</i>
Process type	Assessment process	Assessment and approval process	Assessment and approval process
Levels of assessment	Non-tiered assessment system	Two-tiered assessment system	Multi-tiered assessment system (six different assessment methods)
EIA scope	Potential effects on the physical, biological, heritage, cultural, social, health, safety and economic aspects of human surroundings that are of regional or state significance	Potential impacts on the biophysical environment	Potential impacts on matters of national environmental significance including biophysical environments and heritage properties and places

Figure C1
Environmental impact assessment—Victoria, Western Australia
and Commonwealth – continued

Feature of environmental impact assessment process	Victoria— <i>Environment Effects Act 1978</i>	Western Australia— <i>Environmental Protection Act 1986</i>	Commonwealth— <i>Environment Protection and Biodiversity Conservation Act 1999</i>
Parties that can make a referral	Restricted Referral can be made by: <ul style="list-style-type: none"> • a project proponent (primary means of referrals) • a minister of statutory body responsible for public works • a statutory decision-maker • Minister for Planning directing a decision-maker to do so 	Unrestricted Any person can refer a project	Restricted Referral can be made by: <ul style="list-style-type: none"> • a person proposing to take an action (or someone on behalf of this person) • the Commonwealth or a Commonwealth agency • a state or territory government or agency that has administrative responsibilities relating to the action
Responsibility for administering the process	Department of Environment, Land, Water and Planning	Environmental Protection Authority	Department of Environment and Energy
Determining whether an EIA is required	Minister for Planning	Environmental Protection Authority	Minister for Environment
Determining the level of environmental impact assessment	Minister for Planning	Environmental Protection Authority	Minister for Environment
Making the final assessment or approval	Minister for Planning	Minister for Environment	Minister for Environment
EIA advice or decision made by the minister	Advice The minister's assessment is provided to decision-makers as advice to inform statutory approvals under other legislation	Decision The minister decides whether or not a project can proceed	Decision The minister decides whether or not an action should proceed
Conditions	Not legally binding	Legally binding	Legally binding
Minister's assessment or approval	Not legally binding	Legally binding	Legally binding

Figure C1
Environmental impact assessment—Victoria, Western Australia
and Commonwealth – continued

Feature of environmental impact assessment process	Victoria— <i>Environment Effects Act 1978</i>	Western Australia— <i>Environmental Protection Act 1986</i>	Commonwealth— <i>Environment Protection and Biodiversity Conservation Act 1999</i>
Provisions for monitoring compliance and enforcement under the Act	Unavailable	Available Dedicated audit and enforcement teams to ensure compliance with conditions Proponent has to provide a compliance report annually until the implementation of the condition(s) is complete	Available Dedicated audit and enforcement teams to ensure compliance with conditions
Penalties	No No penalties for failing to refer a project or not complying with the minister's conditions or recommendations	Yes Prosecution or other enforcement actions for breaching conditions	Yes Fines or imprisonment for not referring an action if an action is warranted or if an action is taken without the minister's approval
Opportunities to appeal	Unavailable The minister only makes a recommendation (not an approval decision), so there is no decision to appeal	Available Any person has the right to appeal Environmental Protection Authority's decision not to assess a project A proponent can appeal against the conditions or procedures set by the minister	Unavailable The minister's decision cannot be appealed
Opportunities for public comment	Yes Draft scope and Environmental Effects Statement are released for public comment The public can also make a submission to the inquiry if the minister appoints one	Yes Public comment sought for each referred proposal For level 2 assessments, the Public Environment Review document is also released for public review	Yes Public comment sought for all assessment methods

Source: VAGO.

Auditor-General's reports

Reports tabled during 2016–17

Report title	Date tabled
Enhancing Food and Fibre Productivity (2016–17:1)	August 2016
Audit Committee Governance (2016–17:2)	August 2016
Meeting Obligations to Protect Ramsar Wetlands (2016–17:3)	September 2016
Efficiency and Effectiveness of Hospital Services: Emergency Care (2016–17:4)	October 2016
High Value High Risk 2016–17: Delivering HVHR Projects (2016–17:5)	October 2016
Security of Critical Infrastructure Control Systems for Trains (2016–17:6)	November 2016
Financial Systems Controls Report: 2015–16 (2016–17:7)	November 2016
Auditor-General's Report on the Annual Financial Report of the State of Victoria, 2015–16 (2016–17:8)	November 2016
Water Entities: 2015–16 Audit Snapshot (2016–17:9)	November 2016
Portfolio Departments and Associated Entities: 2015–16 Audit Snapshot (2016–17:10)	November 2016
Local Government: 2015–16 Audit Snapshot (2016–17:11)	November 2016
Public Hospitals: 2015–16 Audit Snapshot (2016–17:12)	November 2016
Access to Public Dental Services in Victoria (2016–17:13)	December 2016
Managing the Performance of Rail Franchisees (2016–17:14)	December 2016
Managing Community Corrections Orders (2016–17:15)	February 2017
Regulating Gambling and Liquor (2016–17:16)	February 2017
Managing Public Sector Records (2016–17:17)	March 2017

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