

## Having your say on mining and quarries: Fact sheet 4

# Getting your voice heard in the EES process

## Introduction

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Environmental impact assessment is a process for assessing the impacts on the environment likely to result from development proposals. A key aspect of the Victorian process is preparation of an environment effects statement (EES) by the **proponent** (the project proposer). The EES process aims to identify and mitigate the impacts of proposals that could have a 'significant effect' on the environment. Such proposals might include projects like mines, quarries, roads, boat ramps, prisons, hazardous waste storage facilities, pipelines or power stations.

The various stages of the EES process are regulated by the *Environment Effects Act 1978* (the EE Act). The legal framework is administered by the Minister for Planning and the Department of Environment, Land, Water and Planning (DELWP). Most of the details about the EES process are set out in the ***Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978*** (the Ministerial Guidelines). The Act and the Ministerial Guidelines can be found at [www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria](http://www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria).

This fact sheet is part of a set developed to help communities who may be affected by major new mining and quarrying proposed projects in Victoria, to participate effectively in the EES process. It assumes that the mine or quarry proposal will require an EES, and focuses on the key points where the public can have input into decision-making. It may be helpful first to read the broad overview of the EES process and the steps involved (**Fact Sheet 1 An overview of environmental impact assessment under the Environment Effects Act 1978**), and then **Fact Sheet 2 Mine/quarry proposals and the EES process**.

# Opportunities for community input

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The public has clearly defined opportunities for input into the EES process, via advertisements inviting comment at both the scoping and public review stages (see below). There are also less-defined opportunities for consultation between the proponent and the community that are not limited to scoping and public review. The proponent may have already initiated community consultation before the proposal was referred to the Planning Minister, and may voluntarily continue to engage with the public. In addition, as part of the proponent's task of preparing the EES, they must consult with the public in order to inform people who may be affected and provide opportunities for input on issues of concern and possible options. Proponents must devise and implement a **Consultation Plan** to assist this process, and are likely to have begun this before the scoping stage.

## Consultation Plan

A typical EES Consultation Plan will:

- provide an overview of the project and the rationale for the consultation;
- summarise communication to date;
- identify key stakeholders and their anticipated level of engagement;
- outline an action plan and a program for delivering the Consultation Plan; and
- explain how consultation will be recorded, monitored and reported.

As part of their proposed engagement with relevant communities, Consultation Plans tend to emphasise principles such as respect, inclusivity and transparency, and the proponent's wish to act as a 'good neighbour'. Consultation is stated to be about more than the provision of information and as including genuine opportunities for the public concerns to be understood, acknowledged, documented and responded to in a meaningful way, at all key stages of the EES process, and beyond if the proposal is approved. Proponents therefore may state that the Plan incorporates a strategy to enable stakeholders' knowledge and views to be considered in both project planning and formal decision-making.

Some Consultation Plans may expressly include an objective that links community engagement to the success of the EES process, because local knowledge, priorities and expertise are framed as able to contribute to the process and outcome. Plans that may be regarded as better practice commit to such mechanisms as:

- making technical or scientific information accessible to stakeholders, including inviting interested stakeholders to technical presentations by experts outlining technical issues, options and implications ;
- responding to all stakeholder concerns and provide mechanisms for documenting and addressing them;
- providing all key reports and studies, baseline monitoring data and community engagement outputs on the proponent's website;
- producing summary reports of stakeholder input during the preparation of the EES and presenting them to DELWP and the TRG for consideration to ensure that relevant issues have been considered and addressed in the draft EES; and
- providing feedback to stakeholders to demonstrate that their input has been considered, including regular communication in diverse forms such as meetings, newsletters and website updates.

Community members interested in the proponent's consultation obligations should refer to the principles, objectives and mechanisms in their Consultation Plan. For further information, Consultation Plans may also refer to DEDJTR's *Community Engagement Guidelines for Mining and Mineral Exploration in Victoria*,<sup>1</sup> and public participation concepts developed by the International Association for Public Participation.<sup>2</sup>

EES Consultation Plans are published on the DELWP website. See [www.planning.vic.gov.au/environmental-assessment/projects](http://www.planning.vic.gov.au/environmental-assessment/projects).

<sup>1</sup> <http://earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/minerals/guidelines-and-codes-of-practice/community-engagement-guidelines-for-mining-and-mineral-exploration>.

<sup>2</sup> <https://www.iap2.org/?page=A4>.

## Scoping

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Once the decision is made to require an EES, the Minister sets the **scope** for it – what matters should be investigated and documented. **Draft scoping requirements** are prepared by the Department of Environment, Land, Water and Planning (DELWP), with input from appropriate agencies, within 20 business days of receiving the required information from the proponent.

The proponent or another source of referral may already set some of the other legislative decision-making in motion before the EES process formally commences. Proposed projects may be subject to Commonwealth law if they are a proposed **controlled action** as defined by the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. Potential controlled actions can be referred to the federal Environment Minister by the project proponent, a State government or local council, a Commonwealth agency, or at the Minister's request if they believe a controlled action is about to be taken.

After the Minister has received an EPBC Act referral, it is published online for **10 days** for public comment (see [www.environment.gov.au/epbc/public-notice](http://www.environment.gov.au/epbc/public-notice)). The Minister then decides whether the action referred is a controlled action, and therefore whether it needs formal assessment and approval under the EPBC Act. The Minister must take the public comments into account. If the Minister decides that the proposed project is a controlled action, it is likely to be assessed as part of the Victorian EES process. For more detail, see **Fact Sheet 3 The EPBC Act and the EES process**.

Under the provisions of the *Aboriginal Heritage Act 2006* (Vic), if the proposal requires an EES, a **Cultural Heritage Management Plan (CHMP)** must also be prepared. A CHMP must be prepared by a Heritage Adviser, and may then be evaluated by the relevant **Registered Aboriginal Party (RAP)**, or if there is no RAP in place, any other appropriate Aboriginal individuals or groups that the proponent consults. The RAP or the Secretary of Department of Premier and Cabinet, or in certain circumstances the Aboriginal Heritage Council, then decides whether the CHMP should be approved.

During the draft scoping stage for the EES, the proponent is also expected to begin to canvass all of the other relevant policies and legislation that may apply to decision-making about the proposed project. For more detail, see **Fact Sheet 1 An overview of environmental impact assessment under the EE Act**.

The draft scoping requirements are then released for public comment for **at least 15 business days**. The proponent is asked to pay for advertising costs for notices in at least one daily newspaper and in one or more local paper circulating in the area of the rural or regional proposal. The draft requirements are also published on the DELWP website [www.planning.vic.gov.au/environmental-assessment/projects](http://www.planning.vic.gov.au/environmental-assessment/projects).

Submissions can be made via the DELWP website. When using the online form or template, submitters will be provided with the option to have their submission remain confidential, to have the information provided to the proponent on a de-identified basis. If not using the online form or template, submitters should make their preferences clear in the submission itself or any covering email.

**Scoping requirements** will normally be finalised 15 business days after the close of public comments. Note that although the Minister will finalise the scoping requirements within 15 days, they may not be published immediately. These set the parameters for the preparation of the EES by the proponent.

For examples of scoping requirements, see [www.planning.vic.gov.au/environmental-assessment/projects](http://www.planning.vic.gov.au/environmental-assessment/projects)

## Preparation of the EES

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Once the scoping is completed it is the proponent's responsibility to prepare the EES including any studies or technical reports that are required.

Landholders adjacent to or within the proposed project area may be requested to provide access to the proponent or the proponent's experts for the purpose of conducting research and inquiries required by the EES. As with any request to enter private property, there is no legal obligation to provide this access.

The preparation of the EES is undertaken by the proponent in accordance with the Scoping Requirements and study program, guided by DELWP and the Technical Reference Group. There is usually little if any opportunity for community involvement in the development of the EES, although the proponent may request some participation in the development of its social impact assessment material if this is required. The proponent will also typically be required to continue to keep the community informed through the Consultation Plan approved by the Department.

For more detail on the EES preparation stage, see **Fact Sheet 1 *An overview of environmental impact assessment under the Environment Effects Act 1978.***

## Public review

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When the EES has been completed, the Minister for Planning releases it for public comment (written submissions). The proponent should give public notice of the exhibition of their EES in at least one daily newspaper, one or more local papers, and on the DELWP website. There should be effective public access to the EES and related documentation, including:

- if needed, printed copies at specified locations;
- making the EES downloadable from the proponent's website;
- free summaries; and
- affordable printed and/or CD/DVD versions for purchase.

## Submissions

The Ministerial Guidelines provide for a written submission deadline of 20–30 business days, but in practice, all recent EESs have been exhibited for at least **30 business days**. Submissions will normally be treated as public documents, and will be available to be inspected and used by any interested parties.

In exceptional circumstances, DELWP may consider a request for a submission or parts of a submission to be treated on a confidential basis (for instance, for reasons of commercial confidentiality or cultural sensitivity). All EESs are required to contain a summary document, and in many instances this document will be sufficient for an interested member of the public to understand the proposal, and the findings and conclusions of the EES on matters of interest.

There are considerable challenges, however, for members of the public or community groups who wish to review the EES and technical material in depth within the 30 business days required. The Environment Effects Statement is usually a very lengthy and complex document. A Victorian Parliamentary Inquiry into the EES process found 'significant barriers to public participation in the EES process with community groups experiencing difficulties interpreting large volumes of EES documentation and associated time constraints.'<sup>3</sup> The Inquiry report gave examples of EES documentation, including the Victorian Desalination Project EES which 'comprised over 1,800 pages of highly complex technical material plus works approvals of about 430 pages and 84 appendices which averaged approximately 90–100 pages each'; the first Channel Deepening Project EES which 'contained 50 chapters, and a 44 page summary [as well as] 113 technical appendices', and a supplementary EES for the project consisting of 15,000 pages.<sup>4</sup>

If you are interested in engaging in depth with the EES, you should therefore prepare ahead of time to ensure that you have the capacity to analyse and respond to the Statement, including its technical appendices. This may mean ensuring that support is available to interpret some of the technical material that the Statement and associated documents will contain, and identifying possible experts to provide more detailed assistance.

Other strategies to help you meet the deadline might include working collaboratively with other community members with similar views, and allocating particular review and submission drafting tasks to members of your group with relevant interests or skills. It is also often much more constructive for a submitter to identify the issue(s) of genuine or greatest interest and focus more on that, rather than adopting a 'scattergun' approach.

<sup>3</sup> <https://www.parliament.vic.gov.au/303-enrc/inquiry-into-the-environment-effects-statement-process-in-victoria-sp-515>, p3.

<sup>4</sup> See note 3, p159.

Issues raised in submissions on the EES, or through the consultation process, should be responded to by the proponent in writing and distributed as part of the documentation for any inquiry. The proponent's response may include trying to negotiate a resolution of particular issues before the inquiry takes place.

## Inquiry

If the Minister has decided that an EES is required, typically, she or he also then decides that an inquiry will be appointed and in fact in most cases the need for an inquiry will have been determined at the commencement of the EES process. The inquiry considers the effects of the proposed project, having regard to the EES studies and public submissions. The inquiry's terms of reference will probably include specific investigations, and providing findings and recommendations to the Minister.

While the inquiry may be a desktop review of written submissions or a roundtable conference with submitters, for all recent EESs the inquiry has taken the form of a public hearing. A public hearing will consist of presentations from the proponent and submitters and, and expert evidence. You may call your own experts as part of this process. EES inquiries seek to make participation by submitters less intimidating than might be experienced at a court. For example, submitters cannot be cross-examined as expert witnesses can be.

Any inquiry will produce a written report that will be given to the Minister. Community members can generally access the report once the Minister's assessment is released (see below).

For examples of inquiry reports, see [www.planning.vic.gov.au/environmental-assessment/completed-projects](http://www.planning.vic.gov.au/environmental-assessment/completed-projects)

## After public review

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The Planning Minister prepares an **assessment** based on the EES documents, public submissions, the proponent's responses and the report of the inquiry. The Minister may also have requested that the proponent provide a supplementary statement, and the public may have been invited to comment on this, in which case the supplementary statement also forms part of the context for assessment.

The proposal is ultimately approved or refused by the relevant Government or statutory decision-maker that administers the appropriate legislation. There are limited opportunities for community input at this stage, particularly where mining and quarrying proposals are concerned. For example, following consideration of the Planning Minister's Assessment of the EES, the Secretary of DEDJTR decides whether to approve a work plan for a proposed mine. For quarry proposals, the Minister for Resources decides whether to grant a work authority.

In some proposals assessed for environmental impact, a separate planning and/or works approval process (under the *Planning and Environment Act 1987* and the *Environment Protection Act 1970* respectively) may have to be undertaken. However, planning and environment protection (EPA) considerations are largely incorporated into the EES process where mines and quarry proposals are concerned. For more detail, see **Fact Sheet 2 Mine/quarry proposals and the EES process**.

## Further information

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Ministerial Guidelines [www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria](http://www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria)

Environmental Defenders Office (Victoria) Ltd, *Briefing Paper – ENRC Recommendations for EIA in Victoria* [envirojustice.org.au/submissions-and-issues-papers/environmental-effects-statement-process-review-september-2011](http://envirojustice.org.au/submissions-and-issues-papers/environmental-effects-statement-process-review-september-2011)

## Fact sheets in this series

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Download all fact sheets from our website: [www.cels.org.au/kits-and-fact-sheets/#having-your-say](http://www.cels.org.au/kits-and-fact-sheets/#having-your-say).

1. An overview of environmental impact assessment under the *Environment Effects Act 1978*
2. Mine/quarry proposals and the EES process
3. The EPBC Act and the EES process
4. Getting your voice heard in the EES process

## About the Community Environmental Legal Service (CELS)

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Providing legal help to Victorians as part of the Community Environmental Legal Service (CELS) program is one of the many ways Environmental Justice Australia pursues access to justice.

The CELS program provides legal help for Victorians through the publication of kits, fact sheets and videos which provide accessible and practical environmental law information to the Victorian community. Through the CELS program we also conduct legal workshops in Victoria, run by one of our expert environmental lawyers to suit the needs of community groups or groups of individuals concerned about or impacted by environmental issues.

Environmental Justice Australia believes that all Australians have a right to clean air, clean water, and intact ecosystems. It's also crucial that our communities have a real say over what happens to our environment, and that means participating in decision-making processes. We're working to pursue environmental justice for communities affected by environmental harm by supporting their right to information, their right to participate in the legal and legislative process, and their right to participate in decision-making about their communities and the places where they live.

If you have a query about anything in this Fact Sheet, or would like the Community Environmental Legal Service to assist you to protect the environment, please call us: **8341 3100 (metropolitan)** or **1300 336 842 (regional)**

**Donate at:** [www.envirojustice.org.au/donate](http://www.envirojustice.org.au/donate)

## Acknowledgment

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The education program will better equip local community members to participate in public consultation processes and engage with project proponents and other stakeholders.

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### DISCLAIMER

**This fact sheet is intended to provide information only and is not a substitute for legal advice specific to your circumstances.**

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