

## **Title: Formal vs informal participatory EIA methods: a South Australian Case Study**

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### ***Abstract***

Directly involving the public in environmental decision-making is now a prerequisite for most government agency programs and initiatives. However, ambiguities exist about appropriate methods of engagement and how much public involvement in decision making is a good thing. Public participation is considered to be essential criteria for best practice EIA. Benefits for both the public and the proponent (or developer) have been increasingly recognised. The following paper questions the role and effectiveness of public involvement in EIA in South Australia. While public participation is recognised within the legislation and various opportunities exist within the South Australian system for the public to be involved in the process, initial analysis of EIA practice suggests that formal methods of public engagement may not influence the process as perhaps they should. A brief overview of South Australian mechanisms and practice is presented. A case study highlights how both formal and informal participatory methods were unable to influence a decision to the satisfaction of the local community. The paper concludes that a comprehensive analysis is required to determine the relative value of submissions versus informal methods of participation and how public involvement has influenced the decision making outcomes for major projects in South Australia.

### ***Introduction***

Public participation is considered part of the essential criteria for best practice EIA and its benefits are well documented (See for example (ANZEC 1996; Glasson et al. 2005). The role of public participation is well accepted in Australia (Harvey 1998). Of concern is that many developers are still of the view that public involvement is simply a public relations exercise (Shepherd & Bowler 1997; Beder 1999). A review of EIA projects in South Australia between 1994 and 2005 reveals some changes to the EIA process affecting participation (Clarke & Harvey 2006). The number of EIAs that have invoked informal participatory action is an indication that formal mechanisms are not as effective as they should be.

There is great variation in the nature, purpose, timing and degree of public participation programs between jurisdictions. This variation depends in part, upon the jurisdiction's culture, its political system and educational levels (Wood 2003). Formal involvement refers to specific legislative mechanisms in EIA which allow for public input and information. This usually includes public submissions on an EIS, and in some cases, formal input into triggering of EIA, scoping, provision of appeal mechanisms and the use of consultative committees and public inquiries (Harvey 1996b). In direct contrast, informal involvement refers to community-initiated involvement via the use of lobby groups either before, during or after the EIA process (Harvey 1996b).

The following paper questions the role and effectiveness of public involvement in EIA in South Australia. While public participation is recognised within the

legislation and various opportunities exist within the system for the public to be involved in the process, analysis of EIA practice suggests that public engagement may not influence the process as perhaps it should. A brief overview of South Australian mechanisms and practice is presented. A case study highlights how different participatory methods were unable to influence a decision.

***The South Australian EIA process and public participation***

Procedures for EIA in South Australia are legislated under the South Australian *Development Act 1993* which came into effect in January 1994 (Harvey 1998; Clarke & Harvey 2006). Formal mechanisms for engagement in the EIA process were modified in 1996 through the *Amended Development Act 1996*. Modifications included opportunities for the public to have formal input into the scoping process; the introduction of two new levels of assessment in addition to the EIS (summarized in Table 1); a reduction from many to one decision-making authority; and an associated reduction in appeal rights (Clarke & Harvey 2006). Part of the purpose of the Act amendments was to fast-track, or streamline, the EIA process through the lower levels of assessment with fewer restrictions on public reporting requirements. The period of public review varies according to the level of assessment, with a minimum period of 30 business days required for the Environmental Impact Statement (EIS) and Public Environmental Report (PER), and 15 business days for the Development Report (DR) (Harvey 1998). The Development Act also requires a public meeting to be conducted during this period for the two highest levels of assessment, with no such requirement existing for the DR. There is however, no requirement for the recording of comments or issues raised during these meetings. Written submissions received during the review period are forwarded to the proponent, who must publicly respond to comments on the EIS and PER, but no such requirement exists for the DR (Harvey 1998). Issues raised by the public in a DR can be responded to in an Assessment Report, but such response is not mandatory.

**Table 1: EIA levels of assessment in South Australia**

<b>Environmental Impact Statement (EIS)</b>	<b>Public Environmental Report (PER)</b>	<b>Development Report (DR)</b>
Required for the most complex proposals; a wide range of issues to be investigated in depth.	Sometimes referred to as a 'targeted EIS'; issues require investigation in depth; narrower in scope, relatively well known, existing information available.	The least complex level of assessment. Relies principally on existing information.
EIS must be released for public comment for a minimum period of 30 business days.  A public meeting must be held in an area close to the proposal.  Assessment report: publicly advertised, personal notification to those making submissions	PER must be released for public comment for a minimum period of 30 business days.  A public meeting must be held in an area close to the proposal.  Assessment report: publicly advertised, personal notification to those making submissions	DR is released for a minimum period of 15 business days.  A public meeting is not a statutory requirement.  Assessment report: not required to be advertised. No need for personal notification to those making submissions.

### ***Effectiveness of submissions***

The level of formal public involvement in individual assessments appears to have increased in South Australia since the previous legislation under the *Planning Act 1982*. Formal participation was generally strong in response to proponent documentation – especially the EIS. Harvey (1995) calculated a mean figure of 51 public submissions for the 37 completed EISs under the *Planning Act 1982*. Under the *Development Act 1993* for the 26 EIAs (including EIS, PER and DR) a significantly higher mean of 177 submissions was recorded (Clarke & Harvey 2006). The proposals with the five highest numbers of submissions under the *Planning Act* were either not approved, were modified, or were halted. The perception that a large number of submissions could stop a project going ahead may be responsible for the increase in participatory effort over time in South Australia. However, under the *Development Act* of the proposals generating the five highest numbers of submissions only one project was halted, and this was on the basis of extensive, high profile public action that became a political decision. The Review also shows that the DRs attracted significantly less submissions than higher levels of assessment (Clarke & Harvey 2006) and all DR projects were approved. Combined with the annulment of appeal rights, or ‘hard’ participatory rights, the DR level of assessment is attractive to some developers. For various reasons, recently assessed DR projects have successfully bypassed local level planning authorities and avoided perceived problems or delays (especially appeals) that may have occurred. In these cases it appears that the EIA process may have in effect removed the control of local planning authorities. The *ad hoc* nature of triggering and of determining the level of assessment in South Australia requires closer scrutiny.

### ***Informal participation – used to better effect?***

As noted by Harvey (1996a) informal public involvement has also been influential in decision-making in EIA in South Australia, especially when lobby groups form to raise the profile of proposed developments in the media, and generate increased levels of public protest. This occurred for a number of EIS projects under the *Development Act*. Public action included protest marches, media campaigns, petitions, construction of protest signs, and the lobbying of local politicians. The capacity of the public to change the outcome of proposals has been limited.

### ***Case study – a landfill project***

Existing landfill sites in the north of Adelaide were rapidly approaching the end of their operational lives in the late 1990s and the need for the identification and approval of alternative locations was evident (as highlighted by an Integrated Waste Management Strategy 1998). One option was a landfill designed to receive 20 million cubic metres of municipal solid waste over a 60 to 80 year life span, meeting the needs of central and northern metropolitan Adelaide (the state capital) (DTUP 1997). The preparation of an EIS for the project was required mid October 1994 (DHUDLGR, 1994). Draft guidelines outlining the scope of the project were placed on public exhibition for a one month period in early December 1994 (DHUDLGR, 1994). Subsequently the EIS was undertaken, with a public review period occurring for 8 weeks from mid April 1996 (Bone & Tonkin Planners Pty Ltd, 1996). During this EIS exhibition period, a public meeting was held at the local town hall where approximately 150 people attended (DTUP 1997).

In response to the formal review of the EIS, a total of 40 public and 9 government submissions were received (IWS 1997). This is a relatively modest response compared to other controversial projects of the time which generated well over 1000 submissions (Clarke & Harvey 2006). Submissions opposing the development expressed concerns ranging from the potential impact of leachate, to the social impacts on existing and future communities. In response to the submissions, the proponent revised and changed a number of aspects of the proposal which were presented in the response document released in June 1997 (IWS 1997).

Despite the alterations, local residents were not satisfied with the adequacy of the proponent's response or of the EIA procedures. This resulted in considerable time and money being put into informal activities that were designed to raise greater public awareness to their concerns. Subsequently, local residents utilised the most effective means of communication they had at their disposal: the passing traffic on the main arterial route out of Adelaide, the Port Wakefield Road. Here, numerous, eye-catching constructions over six metres high were erected on farming land adjacent to the road. This 'road art' clearly expressed the residents' opposition to the proposal, and the handling of the EIA process by the State government. Furthermore, the signs generated considerable media coverage. The political pressure that these informal activities intended to generate was clearly apparent.

Despite the efforts of local residents, the government's Assessment Report concluded that the proponent had demonstrated that the site was suitable for the proposed landfill operation. On January 29th 1998 the Governor approved the project. Local people did not see the public consultation process as satisfactory. Residents infiltrated State Parliament in February 1998 to protest against the landfill. Whilst the protest raised the same objections as those aired in the submission process, the residents' group also voiced concerns over the EIA process itself. There was a call for an independent EIS to avoid potential bias in favour of the developer (The Advertiser, 2nd February 1998). The efforts of groups were thwarted. The approval stood. The IWS Balefill is now fully functioning. The cynical view regarding this decision is that the State needed to find a suitable site for a waste disposal facility and did so at the expense of strong public opposition, including those of the local government within whose constituency the facility would be sited (Clarke & Harvey 2006).

## **Conclusion**

Under the *Development Act 1993* in South Australia the public has had more opportunities to prepare written submissions, more 'soft' options, than for previous legislation. Early notification through the scoping process opened up participation opportunities. Under current legislation the public has also responded strongly to the invitation to prepare submissions about proposal documentation, especially proposals assessed at the EIS level. Despite the formal opportunities to comment, a number of proposals invoked direct action (rallies, meetings and protests) indicating that formal participatory mechanisms did not fulfill the needs of local communities. On the basis of decisions made for such proposals it appears that the role of the public has been rather tokenistic and had limited influence in shaping final decisions. At the same time 'hard rights' have been removed; the lack of right by the public to appeal against the Governor's final decision is one of the most significant amendments to the Development Act legislation. It appears that developers are making good use of this lower level of assessment in South Australia with a relatively large number of

proposals being assessed between 1994 and 2005. The public has very limited opportunity to engage in the process at this level and developers are released from having to hold public meetings or respond to submissions. The role of the public in EIA in South Australia is worthy of closer scrutiny – a careful analysis of project approval in relation to the content of written submissions is called for, to provide assurance that the State is committed to due process.

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