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Beyond Compliance outcomes through impact assessment

Is there potential for impact assessment to support a shift in focus from compliance to 'beyond compliance' outcomes for Australian transport infrastructure projects?

Introduction and rationale

Infrastructure delivery in Australia is subject to environmental approval and compliance processes, with impact assessment a key part of the process.

Our largely compliance driven approach to reporting on progress against delivery commitments usually only captures obligatory metrics imposed via conditions of approval, which are defined on completion of the impact assessment process.

'Beyond compliance' is defined as the achievement of demonstrable environmental and social benefits, above and beyond those mandated by the compliance process. Proponents that establish their own self-regulation processes and corporate commitments for social and environmental outcomes above and beyond their compliance requirements are deemed to be going beyond compliance. However there is limited evidence documenting beyond compliance outcomes for infrastructure planning and delivery in Australia.

This paper builds upon a Masters research project completed by Rachel Brazier in 2018, which examined the following research question:

What are the barriers and motivations for beyond compliance outcomes in the transport infrastructure construction industry in Australia, and how are beyond compliance outcomes communicated?

This paper considers how the impact assessment phase of projects could better frame the delivery of beyond compliance outcomes.

Findings of previous research

Results from the 2018 industry review, qualitative industry survey and literature review consistently suggested that beyond compliance outcomes are achievable, however there are multiple inter-related challenges to be addressed. Both barriers and encouraging factors to beyond compliance outcomes emerged as being inherently linked. The reputational, marketing and public relations / social licence value of targeting beyond compliance outcomes was also identified in the literature review, industry review and survey responses.

The industry review examined four recent Australian transport infrastructure projects, at the construction or pre-construction delivery phase. It identified the importance of proponent or client led, contractual obligations throughout the planning, design and delivery phases of projects in establishing beyond compliance practices. Commonly, the intent to aim for beyond compliance outcomes was evident during the impact assessment and approval phase. However, without proponent driven targets, objectives or conditioning, these commitments seem to fade once construction commences.

Of the projects examined, the Sydney Metro Northwest project was the only project with clear documentation with regards to sustainability/ beyond compliance performance, incorporated into compliance reporting processes and culminating in an annual sustainability report. This project had conducted one round of sustainability assurance reporting at the time of analysis in 2018.

The Draft Outline Environmental Management Plan for the Cross River Rail project establishes requirements for tracking and monitoring sustainability. Whilst the conditions of approval include these requirements, reporting on the implementation of these actions was not mandated.

The Westconnex project has a Sustainability Strategy outlining objectives targets and commitments, and is registered for an ISCA Infrastructure Sustainability rating. The 2015 Westconnex Sustainability Strategy commits to Sydney Motorway Corporation delivering an annual sustainability report, however this commitment is not included in the 2017 updated Westconnex Sustainability Report, with the updated report appearing to be a hybrid sustainability strategy/ report.

The Pacific Highway Woolgoolga to Ballina project produces a report card documenting progress and outcomes across the programme of works, but sustainability initiatives and outcomes are not evident. The Pacific Complete Construction Environmental Management Plan assigns the responsibility for developing and implementing the environment and sustainability policy strategy to the project director and environment and sustainability manager, however this information does not appear to be publicly reported.

Results from the qualitative industry survey suggested that cost is the biggest barrier to beyond compliance outcomes. The ability to value 'beyond compliance' outcomes could assist to address this barrier. However, the question of 'value to whom' requires further consideration in light of current project delivery models. The need for champions was also identified as a key recommendation, to enable the industry to normalise this approach of beyond compliance outcomes.

The literature suggests that there are some ingrained attitudes across the industry that 'sustainability costs more', 'regulatory compliance burden' (Ford et al 2014), weakening the argument to aim for 'beyond compliance'. However Tan et al (2015) suggests that there is a compelling correlation between high sustainability performance and internal revenue growth'.

Some barriers in the transport infrastructure construction sector can be attributed to the focus on short term profits compromising the potential to realise sustainable outcomes (Doorasamy and Baldavaloo, 2016). Competitive construction tendering often results in the race to the bottom, with lowest price tendering resulting in poor quality, inefficiencies and morally questionable behaviours (Hinton and Hamilton, 2015). Generally, construction firms are perceived as less mature with narrower focus than other organisations with well-established processes and frameworks for corporate sustainability reporting (Looseman and Lim, 2017).

The value of being seen as a 'good corporate citizen' whilst simultaneously avoiding more stringent regulation was discussed in the literature, and also identified in the survey responses, particularly where works are occurring in sensitive areas with unique environmental constraints.

Government agencies are expected to visibly demonstrate their commitment to their values and policies, statutory obligations to maintain their social licence to operate (Vanclay et al 2015). The impact and influence of chosen delivery partners can have a significant impact on their ability to do so. Ford et al (2014) suggest in their research that there is evidence of constructing firms 'over-complying with regulation to gain competitive advantage and to maintain social licence to operate'. Further, going beyond compliance can 'shape the regulatory landscape, influencing the progression of regulation as a risk reduction strategy' (Ford et al, 2014). This in turn can lead to continuous improvement across the planning, impact assessment, conditioning, approval and construction phases of infrastructure projects.

Pathways to beyond compliance outcomes

Two pathways to beyond compliance outcomes have been identified. The first, industry or proponents driven change, the second being government/ regulators encouraging proponents to go above and beyond. Societal expectations on proponents, and their delivery partners (consultants and contractors) is also key. The role impact assessment could play under each pathway is also briefly discussed.

1. Proponent led

For proponents to lead, they need to see value in beyond compliance outcomes across all project delivery phases, for both their organisation and in achieving broader societal and environmental goals. These organisations need champions who will drive beyond compliance outcomes and get stakeholders on board with the approach. They will need to have beyond compliance thinking embedded into their corporate culture and processes. They will also need to have identified methods to measure success. Relevant frameworks and processes including social return on investment metrics, sustainability reporting, sustainability ratings schemes (such as the Infrastructure Sustainability Council of Australia (ISCA) Infrastructure Sustainability Rating Scheme and ISO14001 Environmental Management Systems (EMS) have evolved as to encourage organisations to go beyond compliance.

The cost of going beyond compliance was identified as a key theme by survey respondents. For proponents to drive change, they need to see that the extra cost and effort required to go beyond their compliance requirements is delivering value to their organisation and their stakeholders. This value is unlikely to be seen on a traditional balance sheet, instead it is more likely to be of reputational value. This reputational value can help projects and proponents to be seen more positively by stakeholders, potentially helping with project acceptance and reducing costs associated with stakeholders who aren't happy with a project. Helping to advance positive societal or environmental outcomes would also be viewed positively by stakeholders, an outcome both government and private sector proponents should be striving for. Proponents should also have a measurement framework and specific metrics established early in the project lifecycle, i.e. during impact assessment so that the costs and effort being put into aiming for beyond compliance outcomes can be appropriately measured and valued. The cost and returns associated with 'beyond compliance' actions or initiatives could also be measured separately to the overall costs of the proposal, and thus not get caught up in the overall value or cost of the project delivery.

Both the research and literature review identified the importance of personal commitment and leadership in the push for beyond compliance outcomes. Organisations need decision makers who will champion beyond compliance approaches. People at the top must see the value of these outcomes and drive behaviours and processes within their organisation that embed this approach into their projects, throughout all delivery phases, not just as part of the 'good news' story during the assessment and approvals phase.

Survey responses and the industry review strongly indicated the importance of establishing the agenda for beyond compliance in contract documentation. The nature of the construction industry (and the legal system supporting it) is compliance or non-compliance. Incorporating compliance metrics and incentives (financial or otherwise) in contractual documentation can also help to normalise expectations of beyond compliance outcomes. There is opportunity to define this better during the impact assessment phase.

There is also potential for proponents to drive competition and improve performance across industry. The potential for collaborative performance assurance frameworks to drive change in the construction industry, can be realised, as demonstrated through the Crossrail performance assurance framework, and embraced through the contractor's signing up to Greenline, a sustainable supplier accreditation scheme (Paris et al, 2017). Defining the proponent's commitment to beyond compliance outcomes at the impact assessment phase can help inform the development of sustainability assurance or performance assurance programs for delivery.

Government led

In the government-led approach, they need to find innovative ways to encourage and incentivise proponents who go above and beyond their compliance requirements. The key to this is to move away from rigid compliance system and recognise that there are other approaches to measuring how projects and proponents are performing. This could include more performance outcomes,

rather than just acceptable solutions, embracing adaptive management practices, government reporting good performance rather than just non-conformance and other innovative ways of incentivising beyond compliance outcomes.

Currently, the impact assessment and approval process is binary, pass or fail. The regulations, policies and guidelines support this rigid approach to identifying compliance or non-compliance.

There is an opportunity for Governments to drive improvement across the industry through stronger regulation (perhaps in a similar way as the shift happening in the Australian financial industry), or establish benchmarks against high-performing projects, during the assessment and approval phase of infrastructure projects. Furthermore, project conditions of approval should include triggers requiring proponents and their delivery partners to report on beyond compliance commitments as part of their compliance reporting requirements.

Other innovative ways of incentivising beyond compliance could include social or green bonds where proponents are financially, or otherwise, compensated by governments if they achieve pre-agreed social or environmental outcomes. This is an industry that is maturing and there is appetite for more research and testing of how these bond type agreements could work in an infrastructure setting.

The question remains however, can Government mandate compliance as beyond compliance- are we just shifting the benchmark?

Can impact assessment help to drive beyond compliance outcomes?

While proponents and/or governments need to drive beyond compliance outcomes in infrastructure projects, there is also a role for impact assessment, to highlight the commitment to beyond compliance outcomes during the project's assessment and approval phase, become enshrined in a project's commitments and conditions of approval, and also define requirements for monitoring and reporting against stated commitments. In summary,

- Business cases should not just based on economic values
- Valuing Ecosystem services as part of the assessment process
- Impact assessment process could support the evolution of good, better, best approaches
- Conditions of approval could have good, better, best outcomes
- Best practice benchmarks to be set and government assessment requirements, policy, regulations and guidelines to be kept up to date with best practice
- Incentives for better and best outcomes – reputational, financial, other
- Impact assessment should be continued and revisited through the lifecycle of a project – not just for the approval phase
- Better metrics (economic or otherwise) that enable communication of performance in tangible, comparable ways.

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