

# Environmental Impact Statements in Queensland: a social license or a regulatory process?

IAIA Conference 29 April to 2 May 2019, Brisbane

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## Background

The Environment Department (Department of Environment and Science) in the State of Queensland, Australia has had a formal environmental impact statement (EIS) assessment process since 2001. It is used to assess large, environmentally sensitive and complex resource (mining, petroleum and geothermal) projects. The mining and gas industries are key economic drivers in this resource rich State. The value of coal exports alone totalled \$A40.7 billion in 2017–18 while liquid natural gas exports were A\$10.7 billion. They are Queensland's top two export earners, followed by metal exports of A\$9.3 billion and all three generate just under A\$4 billion a year in royalties for the State.

Most of Queensland's mining and petroleum resources are located in drier inland areas away from the more heavily populated coastline (Figure 1). With the state's relatively low population of just over five million (mainly located along the coast) and large area of 1.853 million square kilometres, large resource projects do not directly affect the majority of people and communities. Under such circumstances, community concerns with environmental impacts of the resource industry would be expected to be minimal. In practice, most EIS processes attract considerable public interest.

The EIS process under Queensland's environment legislation (*Environmental Protection Act 1994*), while a regulatory requirement for resource projects, empowers community involvement. It requires decision makers to consider social impacts as well as the 'public interest'. The EIS process includes mechanisms to identify social impacts and also capture and address (as much as possible) community interests and concerns with a specific development project. However, this is balanced against the risk of over-burdening project proponents with unreasonable, and possibly duplicative, information provisions and consultative requirements. This paper reviews the Queensland Environment Department's EIS process for major resources projects with a particular emphasis on public involvement and the challenges of maintaining a balanced, relevant and effective process for all stakeholders.

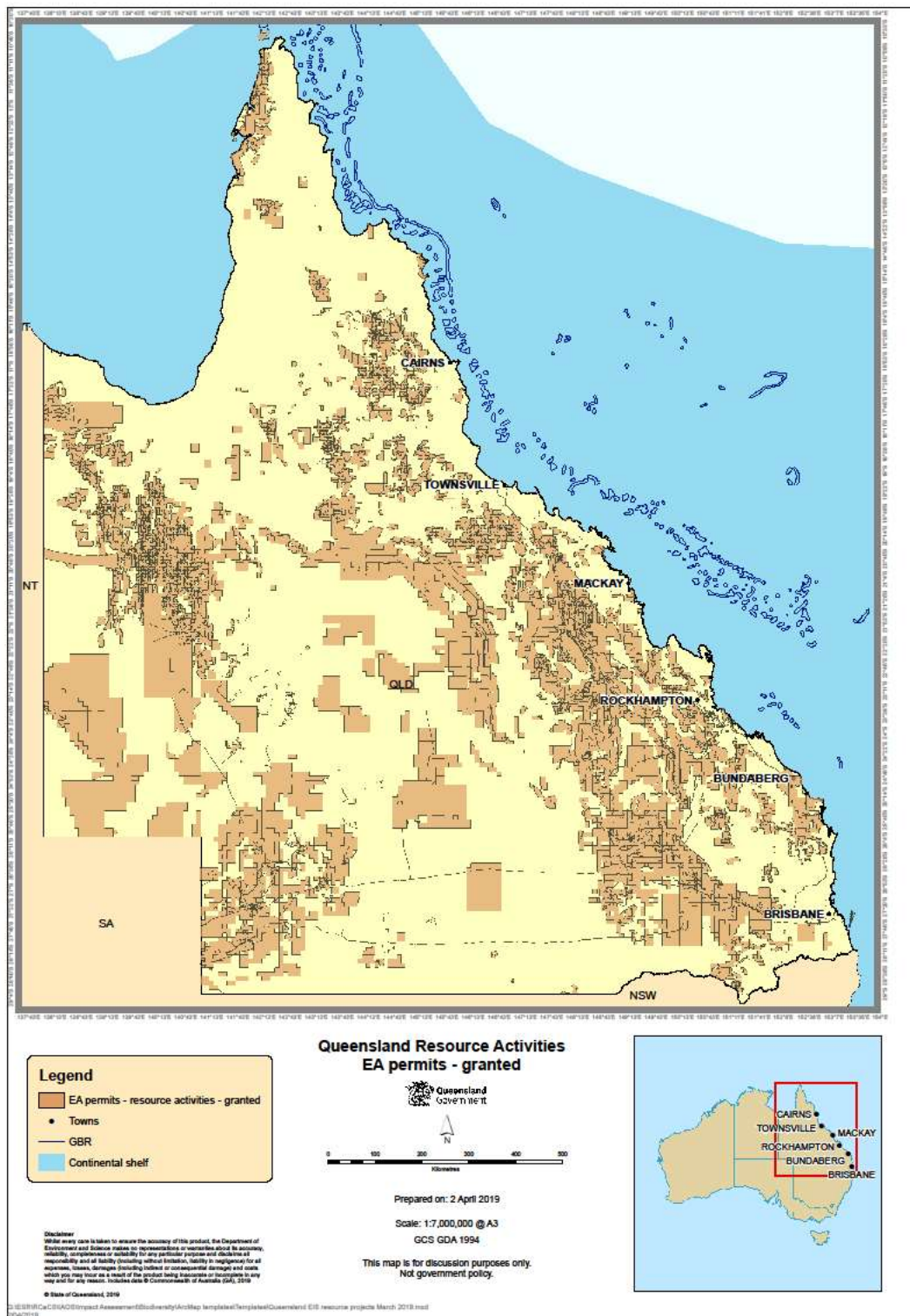


Figure 1 Queensland’s mineral, coal and petroleum operations and resources (source: Queensland Department of Natural Resources and Mines, 2016).

## **EIS triggers**

As coal, mineral, gas and petroleum resources are owned by the state in Queensland, every mining or petroleum project requires both land tenure, which allows the taking of the resource while charged royalties, and an environmental authority (EA) that regulates the environmental impact of the activity. Before approval of a mining or petroleum project, legislation requires that the project's likely environmental impacts are assessed, and measures proposed to avoid or minimise any adverse impacts. There are different levels of assessment depending on the scope of activities and level of environmental risk. Very large complex or sensitive resource projects that involve a relatively high level of environmental impact and risk require a greater level of scrutiny by means of a public EIS assessment process.

Given the high financial and time costs of an EIS process, the Queensland environment department, as with many jurisdictions, has grappled with the questions on when to impose the EIS requirements. Such a decision needs to balance the additional resource and financial costs of the EIS process to the proponent (and government) with the community expectations of thorough and transparent assessment for major impact projects.

Currently the decision on which projects require an EIS is an administrative decision using a suite of parameters steered by a non-statutory guideline and the objectives of the environment legislation. The criteria are primarily based on scale (i.e. relative magnitude) of the project's impact which is assessed by its intensity, duration, irreversibility and the risk of environmental harm, as well as the (positive and negative) social and economic impacts. Criticisms of current arrangements include the lack of certainty to proponents at the application stage on whether an EIS would be required and the difficulty of applying criteria based decision criteria when there is little information known about potential and likely impacts in the early design phase of a proposed project.

## **EIS assessment process**

The EIS process is a regulatory assessment (not approvals) process under Queensland's environment legislation (*Environmental Protection Act 1994*) (Figure 1). Its primary purpose is to assess the potential adverse environmental impacts and proposed management measures to minimise these. These measures including the siting of activities, how they are carried out, rehabilitation success commensurate with the environmental and other values being impacted. Another key purpose is to give enough information about these matters to the Commonwealth and State authorities, local government and the public to inform, facilitate engagement and strengthen decision-making.

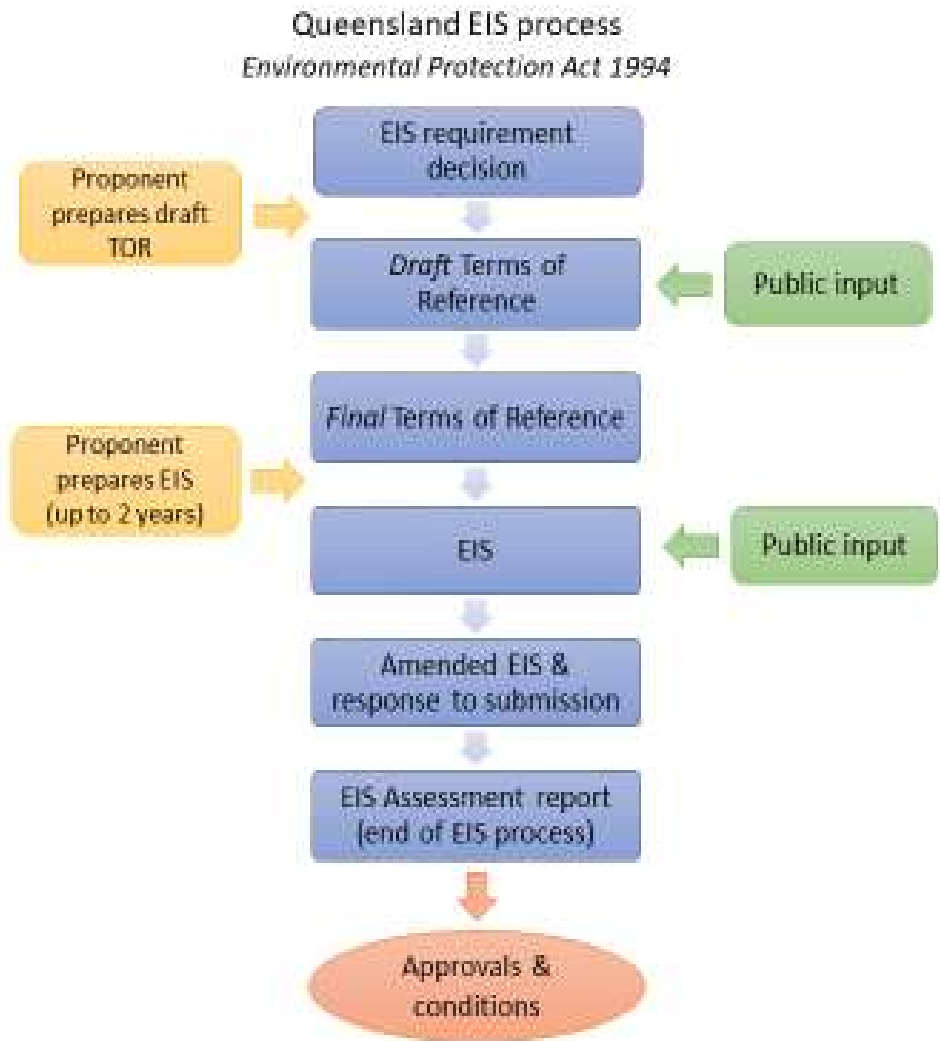


Figure 2 Summary of EIS process for resource projects under Queensland’s environment legislation (*Environmental Protection Act 1994*).

A total of 44 projects have completed the EIS process under Queensland’s environment legislation 2001 (Figure 3). Most projects were for mining, particularly coal (coking and thermal) and took two to four years to complete the process, with the average being two and half years. The so-called mining ‘boom’ of 2010 to 2014 is evident in Figure 3, although the industry growth was already slowing down in 2012 and 2013.

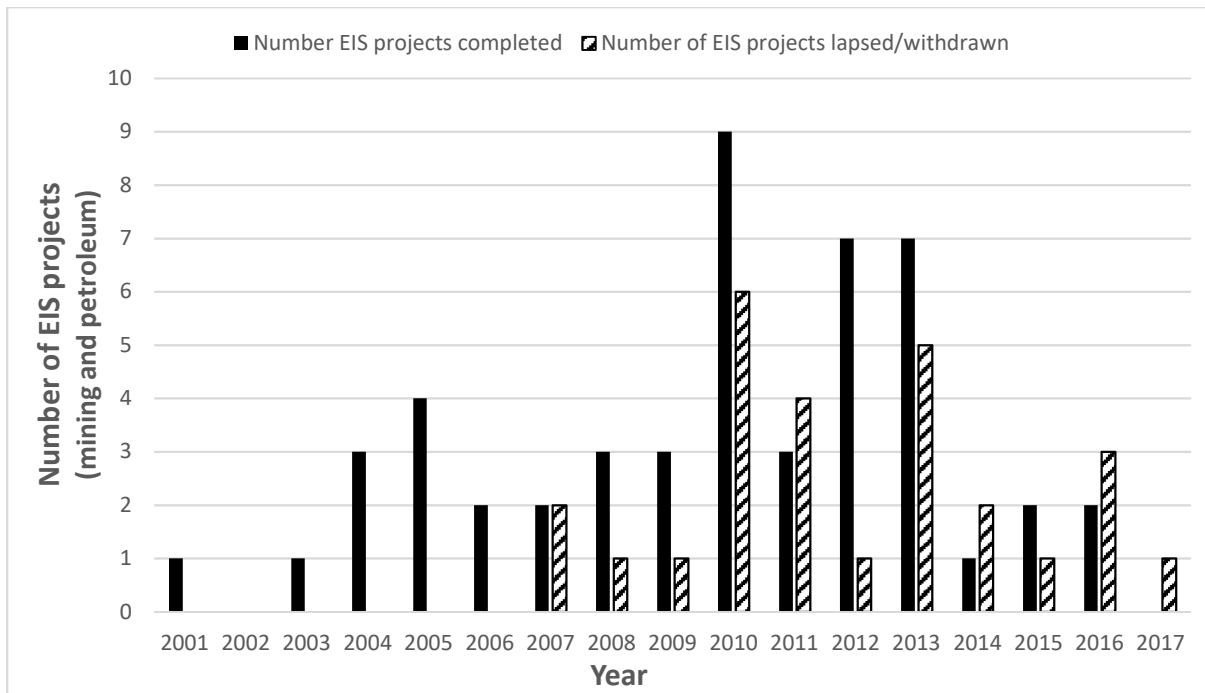


Figure 3 Total number of projects that have completed an EIS process or withdrawn or lapsed from an EIS process since the introduction of the EIS process under *Environmental Protection Act 1994* in Queensland in 2001.

Due to the scale of resource projects assess by EIS, many attract political attention. However, decision making by Government during the EIS assessment process is administrative and non-political. While there is no mechanism in the EIS process for rejecting an application for approval of resource project because of unacceptable impacts, the proponent has to meet requirements that demonstrate that the project is environmentally acceptable in order to complete the assessment. If the proponent is unable to do this, the assessment is not completed. To date, no projects have been refused but a number did not complete or withdrew from the process (Figure 3). Decisions on the adequacy of the EIS and regulatory instruments can be independently challenged by the community in court.

Reforms of environment legislation in 2012 (termed ‘Greentape’ reform) made the EIS process part of the regulatory process for determining whether a resource project could proceed, and if so, under what conditions. Significantly, it did not include the decision (approval or rejection) action.

While these reforms are beneficial for proponents seeking a license to commence a resource development project, the changes mean proponents are required to provide more detailed planning, impact statements and commitments earlier in the project development and assessment process. This does not necessarily suit those proponents who are seeking a higher-level endorsement of their project to generate financial investment and/or canvas general community acceptance (i.e. gain ‘social license’ to operate).

From a community and stakeholder perspective, the 2012 amendments posed little change. However, it did enhance the relevance of the EIS assessment process by making it the only means the community, interested and affected persons and stakeholders could engage in a meaningful way in the assessment process and influence decision making.

### Public engagement

There are several mandatory mechanisms in the EIS process to identify, engage and capture community and stakeholder interest and concerns with a specific project. Persons who are directly

affected by the project such those who hold land or water tenures or interests on the project land or any land joining it, and interested persons such as an unincorporated community or environmental body with a financial or non-financial interest are proactively informed and given opportunities to engage during the EIS assessment process. Legislation also empowers the government to include any person it decides to be relevant.

The public, non-government organisations, all levels of government and industry are provided the opportunity to comment on the scope of matters that need to be dealt with in the EIS ('Terms of Reference') and on the adequacy of the EIS document itself (prepared by the proponent). Terms of Reference are typically inclusive of all matters impacted by the project including land, water, vegetation, surface and groundwater, listed species as well as social and economic aspects. Compared to other assessment processes used in environmental regulation, the EIS process is substantially broader in scope and generally includes substantial technical information on the project and projected impacts. Also, the process requires the proponent to respond to all submissions on the EIS and demonstrate how they have been addressed in the EIS. In doing this the proponent commonly has to explain changes to the project, how it would be delivered or proposed environmental practices to achieve better environmental outcomes.

At both the terms of reference and EIS stages, advertisements in newspapers, and information on government and proponents web sites are the means used for informing the public. There is no legislative requirement for face-to-face public engagement and the only means available for formal public involvement is by a written comment or submission. While not mandatory, it is expected that the proponent undertake a comprehensive program of engagement in parallel with the EIS assessment process. These programs vary considerably in their scope and intensity of engagement depending on the proponent, the type and location of the project, the proponent's perception of community interest in the project, and any likely risks (financial, political and environmental) to the project.

The level of formal engagement using the mandated engagement methods during the EIS process varies considerably from project to project as shown in Figure 2. While the number of government and industry entities that engage in the EIS process is relatively consistent, public and non-government organisation engagement is very dependent on the location, scale and level of community interest—much of which is not always based locally. Community interest is generally targeted on specific projects and not necessarily linked to the size, sensitivity of the receiving environment or scale of impacts.

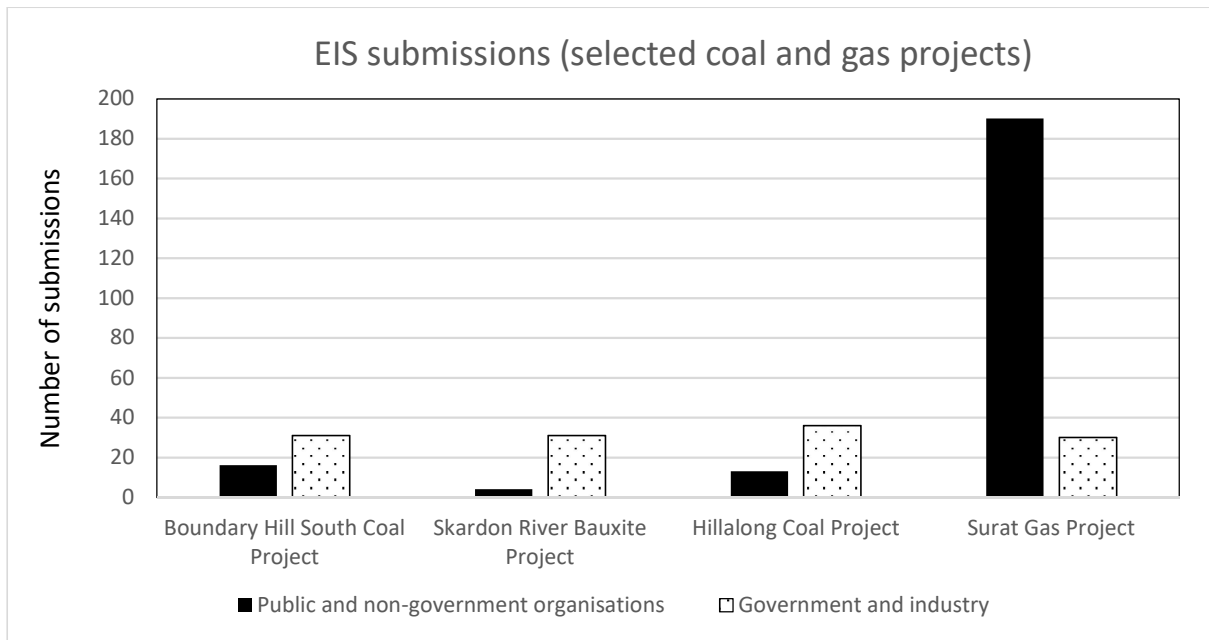


Figure 2 Examples of the number of comments and submissions made for a selection of projects recently evaluated by EIS.

There is a ‘sting’ in the tail of the public comment process for resource projects assessed by EIS. That is, persons and organisations that participate at the EIS stage have rights to object to any decision made to allow the project to proceed (or otherwise) and the conditions that would apply to any approval. From a proponent perspective (depending on the project), this objection process can result in substantial time delays in finalising approvals. This can act as an incentive for the proponents to inform and effectively engage with the community upfront to address as many concerns as possible during the EIS process and minimise the risk of having projects delayed.

From a community perspective, the objection process and hearings in a court can provide an independent assessment, however it is also onerous. Persons or organisations who choose to become objectors at the approval stage of the resource environmental authority (license), need to argue their grievances in court. The persons or organisation must either pay their own legal costs or have the appropriate scientific, legal knowledge and resources to argue their case without legal representation. There is no guaranteed outcome for the objector. Alternatively, the proponent usually has financial means to obtain legal representation. While the land court can make recommendations, it is back to the relevant State Government department to deal with the matters – lease or environmental approval – or both.

While there are regulatory requirements for transparent public consultation in the EIS process under Queensland environment legislation, improving the effectiveness of such engagements in a changing society is a challenge for all governments. The EIS documents are extensive (many thousands of pages), complex (covering more than a dozen key, interrelated themes) and by their nature need to contain highly technical material and extensive data. Presenting such information in a palatable form that provides transparent and factual information to the community is a key challenge. However, such information is essential to allow the community to make informed decisions on the repercussions of the project on matters relevant to them to enable them to make meaningful submissions that can be appropriately addressed in the EIS, design and/or regulation of the project.

## **Future considerations**

Effective stakeholder engagement is fundamental to the EIS process which is meant to provide a high level of scrutiny of the project and provide sufficient clarity and confidence in its predictions that the project receives not only formal governmental approval, but that this approval is also consistent with community interests (i.e. 'social license'). The Queensland Environment Department is currently looking into ways of improving the EIS process to enhance the relevance and effectiveness of the process for all stakeholders into the future.

Consideration is being given to defining when the EIS assessment process is the most effective mechanism of assessing development in a regulatory (decision making) environment (i.e. EIS triggers) and how it should be linked with the environmental license decision. Avenues for engaging more effectively with stakeholders are also being explored. This may include opportunities for using digital technologies, existing and emerging, to improve the format of information provided to the public to assist in making more complex matters clearer and easier to understand. This would have benefits not only for the community, but also for decision makers and the proponent.

While historically most major resource projects in Queensland were located in sparsely populated areas, a social license to operate is becoming increasingly more important to proponents as the community become more engaged in impacts of non-renewable resources and projects move into more populated or highly productive agricultural areas.

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