

WHEN MINING GETS THE GREEN LIGHT

A GUIDE TO STRONGER ENVIRONMENTAL IMPACT STATEMENTS



TRANSPARENCY
INTERNATIONAL
AUSTRALIA

Before a mining company is given an approval to mine, it must conduct a thorough assessment of the proposed project's environmental and social impact. The environmental impact statement produced by this assessment is crucial for government decision-making. It helps government decide whether to give a mining project the green light and how to protect the environment and communities from any harm that project may cause. Therefore, it is vital that environmental impact statements are well designed, accurate and impartial.

An environmental impact statement (EIS) is a key decision-making tool for governments deciding whether to approve a mining operation. It is also key to planning successful mitigation strategies to avoid or reduce any harmful impacts that a project could have on the environment and communities. A well-designed, accurate and impartial EIS is crucial to ensuring that both things are done well.

Transparency International Australia's research into the process of creating an EIS in Queensland found that accountability mechanisms for the environmental and social impact assessors who create an EIS are weak.

There is no requirement for an impact assessor to sign off on the accuracy of their work and no independent professional body to provide technical or ethical oversight and support. There is also the potential for impact assessors to experience pressure from companies or undue influence and there is limited independent verification of the accuracy of an EIS.

These elements create the potential for unethical practice to occur, which heighten the risk that:

- environmental and social impacts are not effectively assessed
- approval conditions are based on incorrect assessments
- management plans will not adequately mitigate negative impacts or rehabilitate damage

As a result, environments can be left polluted, biodiversity lost, Indigenous cultural heritage sites damaged, people's health put at risk and communities left short changed if the promised number of jobs does not materialise.

Requiring an EIS and the technical chapters within it to be signed off by professionally certified impact assessors is one way to reduce these negative impacts and improve public trust and confidence of the environmental impact assessment process. It would also empower impact assessors to resist company pressure or undue influence by being accountable to an independent professional and ethical standard.

This guide examines why we need to strengthen the EIS process and how a certification scheme can be of benefit. It also sets out the foundational elements of a certification scheme, the regulatory changes needed to introduce a certification requirement and what industry can do in the absence of a mandated requirement to use certified environmental and social impact assessors.

While this guide focuses on Queensland, its lessons and recommendations apply to Australia more broadly.

photo: Trevar Chilver

WHY WE NEED A BETTER EIS PROCESS

An EIS is a critical document designed to assist government in decisions of whether to approve a mine and the conditions that would be required to mitigate environmental and social harm. An EIS is the responsibility of a mining company, which will often employ a consultant, or consultants, to undertake technical studies and compile the EIS report. An EIS can contain assessments of the environmental, economic, social, cultural, and cumulative effects of a project and can include complex modelling and data to measure impacts in these areas.

If an EIS lacks rigour, omits critical information, contains false or misleading information, or fails to effectively assess project hazards, government decision-makers will not have the information they require to make a well-informed decision. Decisions based on poor or misleading information can have serious consequences, both for the environment and human health.

Decision makers in government rely on the integrity of impact assessors and their ability to produce an EIS that is of high quality, robust and accurate in order to assess a mine's impact. If a government department is under-resourced or key decision makers are not specialists, there is a good chance that intentional or unintentional inaccuracies within an EIS will be missed.

Information contained within an EIS is not just for governments – members of the public also have a right to access this information and express their concern about a mining project. Mining companies are required to consult with the community, share information and respond to their concerns. If the community does not have clear and accurate information, they will not be able to participate in a meaningful way in a consultation.

Financial institutions also rely on an accurate EIS as part of their risk assessment when deciding to invest in a project.

Deficiencies in EIS documents have led to an erosion of public trust in the environmental impact assessment process. Members of a mining-affected community can and have challenged EIS claims in court (see the New Acland Coal Mine case study). Testing an EIS claim in court is a good option to have, but hardly ideal for a community that rarely has the resources needed to mount and sustain a legal challenge. Nor is it a good situation for a company, which may face years of project delays and costly legal fees.

A better option is to fix the process from the start by requiring a robust and reliable EIS, conducted by an independently certified and professional impact assessor.

Case study: New Acland coal mine

The New Acland coal mine case is a well-known dispute in Queensland between landholders and the New Acland Coal company. The dispute over the expansion of the New Acland coal mine began in 2015 in the Queensland Land Court. As part of the dispute resolution, the Land Court used experts to examine the mine's EIS and found flaws in the technical reports for economics, water, noise and dust that had not been picked up in the government's assessment of the EIS.¹ The Land Court subsequently recommended that the mine's expansion not be approved. The Land Court's decision was appealed multiple times and made its way to the High Court of Australia. At the time of writing, Australia's highest court is yet to decide the appeal. Whatever the outcome, the dispute illustrates the risk of errors being present in an EIS and government subsequently relying on incorrect modeling and data to set conditions. These risks can be reduced by requiring that an EIS be prepared and signed by suitably certified professionals.

1. *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)* [2017] QLC 24 (<https://www.sclqld.org.au/caselaw/QLC/2017/24>).



A better option is to fix the process from the start by requiring a robust and reliable EIS.



THE BENEFITS OF A BETTER EIS PROCESS

No one wants to drive on a bridge that was built by someone who lacks the appropriate qualifications, current professional training, and suitable experience.

Certification, or chartership, is a process by which professions regularly test and confirm the competence, continued training, and ethics of professionals. It is used in many professional and technical specialty disciplines. In some, such as medicine, law, and engineering, it is mandatory and regulated by government.

There is currently no professional certification requirement for impact assessors completing an EIS in Queensland. The risks associated with a flawed EIS are real and will continue until standards are raised and all impact assessors and impact assessments are held to higher professional and ethical standards. A certification scheme can also provide additional integrity and anti-corruption mechanisms such as independent professional and ethical advice and whistleblowing avenues.

Introducing a certification requirement would:

- Ensure an EIS is prepared by technically competent and ethical professionals
- Increase the professional accountability of the person responsible for the EIS document as a whole (EIS lead) and the professionals responsible for each technical report in the EIS (technical specialists)
- Empower impact assessors to resist company pressure or undue influence by being accountable to an independent professional and ethical standard
- Reduce the risk that the EIS contains

inaccurate information or is missing critical information

- Assist government decision-making and risk management, possibly reducing assessment times
- Reduce community concern and provide greater confidence that approval decisions are made on comprehensive and balanced information

Mining companies stand to benefit through improved quality of professional advice and a comprehensive understanding of environmental and social risks. A certification requirement would assist a company to:

- Mitigate project risks
- Reduce the risk of non-compliance with regulatory approval requirements
- Avoid unexpected environmental or social impacts
- Avoid community opposition, time frame and budget blow-outs
- Attract capital investment and project financing

A commitment to ethical practice should be reflected within the professional certification requirements. This would:

- Improve government and public reliance and trust in the EIS
- Improve trust in mining company commitment to informed and balanced environmental and social project outcomes
- Empower impact assessors in relation to ethical decision-making
- Support the principles of Free Prior and Informed Consent for Indigenous Australians

BUILDING THE FOUNDATIONS OF A BETTER PROCESS

An EIS is a crucial document when it comes to mining approvals in Queensland, and in Australia more broadly. The foundations of environmental decision-making need to be strong and the accountability mechanisms for the impact assessors that create an EIS needs to be strengthened to reduce integrity risks and properly mitigate environmental or social harm.

Governments can build better foundations for the environmental impact assessment process by ensuring that an appropriately certified professional signs off on the EIS document as a whole and that appropriately certified professionals sign off on the technical reports within that EIS document.

Government and companies could use a risk-based approach at the EIS scoping stage to require that high risk technical reports, or those potential impacts with high levels of public interest, are independently peer reviewed. Government may also seek to engage independent certified specialists to peer review high risk or complex impacts to advise on its EIS assessment activities.

To ensure that impact assessors are appropriately qualified and experienced, the certification scheme must have sufficient rigour to provide government, industry, and the broader community with confidence that the person is competent. Government should formally recognise schemes that meet specified criteria and provide some level of monitoring and oversight. *Refer to Section: Key requirements of a certification scheme.*

The person responsible for the EIS, **the EIS lead**, **should sign a declaration** or equivalent that verifies they have reviewed the EIS for quality, suitability, and accuracy. *Refer to Section: Key elements of the EIS lead declaration.*

The technical specialists should also sign a declaration verifying the quality, suitability, and accuracy of their technical report. *Refer to Section: Key elements of the technical specialists declaration.*

Key requirements of a certification scheme

The certification scheme should include the following elements:

1. The professional must be suitably qualified (e.g. tertiary degree or equivalent) and experienced, with strong technical knowledge and understanding of impact assessment.
2. The professional must demonstrate their competency (e.g. through work examples or an exam) before they are certified.
3. The professional must agree to abide by a Code of Ethics and a Code of Conduct and be held accountable against those codes. Unethical practice may lead to withdrawal of certification status.
4. The professional must abide by Continuing Professional Development (CPD) commitments.
5. The scheme must conform to the relevant Australian Standard.²
6. The scheme must have policies and procedures for handling complaints and taking disciplinary action against certified professionals and be able to show that those policies and procedures are implemented.

2. AS/NZS ISO/IEC 17024:2013 Conformity assessment – General requirements for bodies operating certification of persons.



The risks associated with a flawed EIS are real and will continue until standards are raised.

Key elements of the EIS lead declaration

The declaration for the professional responsible for the EIS document as a whole should contain the following elements:

1. The EIS lead is professionally independent of the mining company, that is, not a direct employee, and does not have a vested financial interest in successful project outcomes.
2. The document adequately meets the Queensland Government Terms of Reference for the EIS and any critical matters of environmental importance.
3. The EIS lead is appropriately certified in impact assessment.
4. Consultants responsible for technical reports are certified in their specialty area or are appropriately qualified and experienced if certification of that area does not yet exist.
5. Independent peer reviewers have been used to confirm the accuracy of technical reports for high risk or complex impacts.
6. The EIS presents information in a fair and balanced manner and does not contain false or misleading information or obfuscation (i.e. deliberately making information in the EIS ambiguous, less clear, or hard to understand).
7. Factual evidence is distinguished from opinion.
8. Proposed mitigation measures align with leading industry practice.
9. Any limitations in data or conclusions in the EIS are clearly noted.
10. Conclusions in the EIS are supported by the reasoning and evidence provided in the document and technical reports.

Key elements of the technical specialists declaration

The declaration for the technical specialist responsible for each technical report should contain the following elements:

1. The technical specialist is professionally independent of the mining company, that is, not a direct employee, and does not have a vested financial interest in successful project outcomes.
2. The technical specialist is certified in their specialty area or is appropriately qualified and experienced if certification of that area does not yet exist.
3. Appropriate methodologies are used in assessments, including in modelling.
4. Assumptions are clearly stated and appropriate.
5. Terminology is clearly defined and appropriate.
6. Any uncertainties or limitations in their report are clearly acknowledged.
7. Their report does not contain false or misleading information.



BUILDING THE FOUNDATIONS OF A BETTER PROCESS

The environmental impact assessment process in Queensland is complex and there are multiple regulatory pathways that can be used to create an EIS document depending on the activity that is being undertaken. However, introducing a government mandated requirement for impact assessors does not need to be complex, it can be accomplished with minor changes to the following guidelines:

- For an EIS under the *Environment Protection Act 1994* (Qld) (EP Act): Guideline: The environmental impact statement process for resource projects under the *Environmental Protection Act 1994*
- For an EIS under the *State Development and Public Works Organisation Act 1971* (Qld) (Coordinated Project Process): Preparing an environmental impact statement: Guideline for proponents

required standard of information to be achieved in an EIS before it can pass through various stages of development, public consultation, or assessment.

In addition to Queensland's environmental impact assessment pathways, federal environmental protections under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) can also apply to mining projects in Queensland. In this situation, the federal government can use the EIS prepared under Queensland's regulatory process to assess the impacts of a project on matters of national significance, making the requirement of certification all the more important.

Within Queensland's regulatory pathways for creating an EIS are several steps that would benefit from the input of certified impact assessors. Recommendations for changes to these steps are listed in the next table.

These guidelines provide mining companies with the

HOW TO INTRODUCE CERTIFICATION: A SUMMARY

Steps	Recommendation
1. Government produces a Terms of Reference (ToR). The ToR outlines the matters that must be addressed in the EIS and the method or level of investigation.	Government should state in the ToR that the EIS and key technical reports must be signed off by a certified impact assessor independent of the mining company. Additionally, the ToR should state that the EIS and key technical reports must be peer reviewed. Government should use a transparent risk-based approach to determine the key technical reports for peer review.
2. The mining company prepares a draft EIS.	Government should require certified impact assessors to confirm the accuracy, suitability and impartiality of the EIS and the technical reports in the EIS.
3. Government agencies check the adequacy of the draft EIS against the ToR before allowing it to be released for public consultation.	
4. The proponent provides a comprehensive response to any submissions received on the EIS during public consultation.	
5. Government agencies assess the impacts and relevant mitigation strategies proposed by the proponent.	Government agencies should seek expertise from independent certified impact assessors to peer review high risk or complex impacts.

WHAT CAN INDUSTRY DO?

The importance of mining companies adhering to high environmental and social standards cannot be understated. Even though there is currently no requirement for mining companies to use certified impact assessors to prepare their EIS, doing so can provide a more robust EIS that can lead to better quality project outcomes and more effective management of project and integrity risks.

Using certified environmental and social impact assessors can save companies from the risk of long and protracted legal objections, strengthen their social license to operate, and result in better outcomes for the environment and the community. If a certification program does not yet exist for a specialist area, a company should ensure that they use appropriately qualified and experienced professionals through their own due diligence in the hiring process.

DISCLAIMER

Transparency International Australia (TIA) is part of Transparency International's Accountable Mining Programme, a programme led by TIA and supported by the BHP Foundation and the Australian Department of Foreign Affairs and Trade. The research, language, views, conclusions and strategies outlined in this document have been created by TIA and are not necessarily endorsed by Transparency International or the BHP Foundation. The material set out in this publication is intended for general information only. To the extent permitted by local laws, Transparency International and the BHP Foundation exclude liability for and are not liable to any person with respect to the accuracy or completeness of the information set out in the publication.

Transparency International Australia is grateful for the support from the BHP Foundation.

BHP | Foundation

Transparency International Australia

Registered Office:

Level 4, Deutsche Bank Place

126 Philip Street Sydney NSW 2000

Mailing and Street Address:

Level 2, 696 Bourke Street

Melbourne VIC 3000

info@transparency.org.au

+61 (03) 9018 7551

www.transparency.org.au

Twitter: @TIAustralia

November 2020



**TRANSPARENCY
INTERNATIONAL
AUSTRALIA**