

Supplementary  
Submission  
No 112a

## INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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## **SUPPLEMENTARY SUBMISSION TO STATE DEVELOPMENT COMMITTEE INQUIRY INTO NSW STATE PLANNING FRAMEWORK**

**John Formby**

My previous submission dated 23 June 2009 focussed on the environmental impact assessment process but omitted three key issues as follows:

### **An Environmental Assessment Commission**

There is ample evidence that the Department of Planning has become so politicised that it cannot perform its function of reviewing environmental impact assessments impartially. The Gullen Range Wind Farm EA, for example, was so inadequate that it should not have been released to the public without major revisions being required by the Department. The Director-General's Environment Assessment Report on the EA, released since my previous submission, repeatedly provides evidence of bias in favour of the project that appears to be the result of politicisation more than incompetence.

Plenty of evidence of this politicisation can be provided if required. For example, where the Report's authors cannot find an argument to counter an adverse environmental impact, they repeatedly fall back on a generalisation to the effect that the wind farm development should proceed because it accords with 'the highest level of government policy'. This is a policy judgement for the Minister, not for a Departmental Environmental Assessment Report which should deal exclusively with the adequacy of the EA.

It is inevitable that the Department should become too close to proponents and too compliant to the wishes of government. There needs to be a clear separation between the political decision to proceed with a project or not, and the impartial review of the EIA. This should be achieved by the establishment of an independent Environmental Assessment Commission to specify the requirements for the EIA, ensure that it met these, and to report on it. The Commission would carry out these functions for major, complex and contentious proposals. Other EIAs would remain as now with local government.

### **Public Environmental Inquiries**

Recourse to the Land and Environment Court is expensive, time consuming, and legalistic adversarial processes often do not lead to the best outcomes. The Environmental Assessment Commission should be given power to establish a public environmental inquiry to be conducted by one or more of its Commissioners. Such inquiries can be prevented from being excessively lengthy by means such as preventing repetition of evidence and identifying and focussing on key issues. Such inquiries should not prevent ultimate recourse to the Court, but should reduce the frequency and length of Court proceedings.

### **Compliance Audits**

One of the great failings of the EIA process is that there is often little or no auditing by the Department during and post- construction to ensure that undertakings and requirements placed on the proponent are implemented. A function of the Environmental Assessment Commission should be to carry out such audits.

There are other ways of bringing about better review of EIAs, instituting a public inquiry system and ensuring better compliance auditing. But establishing an Environmental Assessment Commission could encompass these and other suggestions made in my first submission. The current legislation needs major revision. It is not working in relation to EIA for major projects, which have become a largely meaningless exercise in window-dressing.