



environmental defender's office new south wales

Inquiry into Environmental Impact Reporting in the NSW Public Sector

6 November 2007

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the fundamental role of early engagement in achieving good environmental outcomes*
- ◆ *the importance of fostering close links with the community*
- ◆ *the importance of indigenous involvement in protection of the environment*
- ◆ *the importance of providing equitable access to EDO services across NSW.*

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Executive Summary

The EDO supports the introduction of environmental impact reporting requirements for the NSW public sector. However, environmental impact reporting should not be conducted in isolation. The accepted international reporting standard of a 'triple bottom line' (TBL), requires the concurrent reporting of environmental, social and economic indicators. Environmental impact reporting constitutes one part of this process. Therefore, although this inquiry focuses on environmental impact reporting by public agencies, this submission will comment on environmental impact reporting within the broader context of TBL reporting. In particular, this submission will highlight some important principles that should underpin a mandatory environmental impact reporting regime.

Summary of Recommendations

- The EDO supports mandatory environmental impact reporting in NSW as an element of a triple bottom line reporting regime;
- The 'public sector' should be broadly defined to include all government departments, statutory bodies, agencies and other government entities;
- The principles of ecologically sustainable development need to inform the creation of a mandatory environmental reporting regime;
- An environmental impact reporting scheme needs to be mandatory. Voluntary schemes are inadequate due to the lack of regulatory safeguards and insufficient review mechanisms;
- Environmental performance indicators need to encompass all the potential environmental impacts of a public agency's activities. With the significant

threat posed by climate change, greenhouse impacts, both direct and indirect, need to be reported;

- The EDO supports annual reporting. Triple bottom line reporting should be included in the annual reports currently required under existing legislation. This is administratively efficient for government departments and convenient for the community;
- The NSW Audit Office, an independent body, should be used to ensure public agencies are meeting their reporting obligations and to verify information provided; and
- A triple bottom line reporting regime for the public sector in NSW should be consistent with international guidelines and key principles found in the Global Reporting Initiative.

1. Introduction

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on the *Inquiry into Environmental Impact Reporting in the NSW Public Sector*. The EDO is a community legal centre specialising in public interest environmental law.

The EDO makes comment on the following Terms of Reference:

- b) The adequacy of the policy and legislative framework*
- c) Important principles in environmental reporting*
- d) The appropriateness and potential for improvements in the quality of environmental performance indicators*
- e) Frequency and methods of reporting*
- f) Achieving maximum efficiencies in the reporting process*
- g) Significant developments in other jurisdictions*

2. The adequacy of the policy and legislative framework

The EDO believes that the current policy and legislative framework for environmental impact reporting by the public sector in NSW is inadequate. In 2005 a NSW Legislative Assembly Committee undertook an inquiry to explore the possibility of mandatory triple bottom line (TBL) reporting for the public sector. A Report entitled '*Sustainability Reporting in the NSW Public Sector*' (hereafter '2005 Report') was published.¹ As identified in the report, there are currently no legislative requirements for NSW government agencies to undertake TBL reporting. There are however a number of reporting requirements in NSW for government departments and statutory bodies, such as annual reporting required by the *Annual Reports (Departments) Act 1985*, the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*, and State of the Environment reporting as required by the *Protection of the Environment Administration Act 1991*. These laws place no mandatory obligation on public agencies to report on the environmental aspects of their operations. Indeed, the 2005 Report found that the current reporting processes do not constitute TBL reporting.² Consequently, the 2005 Report's central recommendation was that a framework for sustainability reporting for the public sector should be established in NSW. The EDO supports in general the published report and its recommendations and believes that it provides a sound basis for a TBL reporting scheme in NSW. Therefore, given the current regulatory gap, and the important role played by government reporting in ensuring accountability and transparency of governance, the EDO supports the introduction of a mandatory environmental impact reporting within a broader TBL reporting regime.

¹ *Sustainability Reporting in the NSW Public Sector*, Committee report, available at <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/C25E8E08F367896ECA2570BC000D8705>.

² *Ibid* at p20.

3. Important principles in environmental reporting

The EDO believes that there are three key considerations that should underpin the development of an environmental impact reporting regime for NSW.

First, the ‘public sector’ should be defined broadly so as to include all government departments, government agencies, statutory bodies and other government-related entities. This is necessary to achieve accountability and transparency of governance. The *Environment Protection and Biodiversity Conservation Act 1999*, which has introduced mandatory sustainability reporting for Commonwealth government agencies, requires a broad range of government instrumentalities to undertake annual sustainability reporting.³ These include departments, executive agencies and statutory agencies. The EDO submits that any NSW scheme should be equally as broad.

Second, an effective environmental impact reporting regime should be consistent with the principles of Ecologically Sustainable Development (ESD). The concept is accepted internationally having been affirmed by the 2002 *World Summit for Sustainable Development*; and has been included in over 30 pieces of NSW legislation. Furthermore, NSW has accepted the principles and objectives of ESD in the *National Strategy for Ecologically Sustainable Development*.⁴ The concept is based on the notion of a ‘triple bottom line’, whereby environmental, economic and social considerations are integrated.⁵ The aim of ESD is to make it clear that environmental impacts are no longer seen as separate from economic and social considerations.⁶ Therefore, introducing a mandatory environmental impact reporting regime in NSW should be established within the context of broader TBL reporting that also requires public agencies to report on the social and economic impacts of their activities.

Thirdly, an environmental impact reporting scheme should be mandatory. Voluntary approaches have a poor track record in most contexts. There are various short-comings of voluntary approaches. These include the lack of regulatory threats and inadequate monitoring.⁷ Further, the Australian Government's Industry Taskforce on Self-Regulation has acknowledged deficiencies of voluntary schemes

³ See *Environment Protection and Biodiversity Conservation Act 1999*, section 516A. This is discussed further below.

⁴ The strategy is found at <http://www.environment.gov.au/esd/national/nosed/index.html> (6 November 2007).

⁵ Lewis Hawke, ‘Walking the talk on sustainable development in the public sector’ (2004) *Public Administration Today* 50 at 50. See also, *Submission Financial Reporting by Unlisted Public Companies*, available on http://www.edo.org.au/edonsw/site/policy/fin_report_unlisted_comp070806.php.

⁶ See, eg. The 2002 *World Summit for Sustainable Development* and the *National Strategy for Ecologically Sustainable Development*, available at <http://www.environment.gov.au/esd/national/nosed/index.html>.

⁷ See OECD (2003) “Voluntary Approaches for Environmental Policy: Effectiveness, efficiency and usage in policy mixes” Working Party on National Environmental Policies, OECD Environmental Policy Committee.

such as inadequate administration and review mechanisms.⁸ As such, voluntary approaches are not an appropriate substitute for mandatory regulation. Hence, the EDO submits that a mandatory environmental reporting regime should be introduced for the public sector in NSW.

4. The appropriateness of and potential for improvements in the quality of environmental performance indicators

The performance indicators that form the basis of triple bottom line reporting scheme are crucial, as they set out exactly what the agency is supposed to measure and report on. These indicators are of three types – social, economic and environmental. Environmental indicators are of particular importance as they measure the impact that the agencies activities, both direct and indirect, have on the environment. Hence, these indicators need to be comprehensive and clear to enable the public to easily discern the environmental footprint of the particular public agency. Of course, these indicators also provide agencies with an opportunity to highlight the positive environmental impacts of their activities such as reductions in greenhouse gas emissions and energy efficiency programmes. With this in mind, the EDO submits that the environmental performance indicators of a NSW environmental impact reporting scheme need to be widely constructed so as to cover all the potential environmental impacts of a public agency's activities. In particular, with increasing concern about the impacts of climate change it is important to ensure that the carbon footprint of an agency and its programmes are readily identified.

The 2005 Report contained a comprehensive set of environmental performance indicators. These included greenhouse gas emissions, energy use, travel, paper consumption, recycling, water use, land use.⁹ Similarly, the Commonwealth Government has published guidelines containing generic environmental performance indicators for Commonwealth agencies to assist them in complying with their obligations under section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*. These mirror the 2005 Report recommendations. However, they also include a measure of the extent to which the particular agency has achieved or promoted the five key principles of ecologically sustainable development.¹⁰ In conclusion, the EDO believes that any NSW environmental impact reporting scheme should include environmental performance indicators that mirror those used by the Commonwealth regime.

5. Frequency and methods of reporting

The EDO is of the view that an annual environmental impact reporting scheme should be introduced in NSW. Currently, the only form of environmental

⁸ Industry Taskforce on Self-Regulation – Final Report, August 2000, chapter 6, pp 59-86.

⁹ Legislative Assembly Public Accounts Committee, *Sustainability Reporting in the NSW Public Sector* – November 2005, Appendix 3.

¹⁰ These are: the integration principle, the precautionary principle, the intergenerational equity principle, the biodiversity principle and the valuation principle.

reporting conducted by agencies is for the NSW State of the Environment Report which is published every three years as required by section 10 of the *Protection of the Environment Administration Act 1991*.

The EDO believes that the appropriate method of environmental impact reporting is to incorporate triple bottom line reporting into the annual reporting requirements that currently exist for government departments and NSW statutory bodies. This will reduce the administrative burden of agencies and will make it easier for the public to locate relevant information about the agency's activities in one place of reference. Indeed, the 2005 Report recommended that TBL reports should become an integral part of public agencies' annual reports to Parliament.¹¹

6. Achieving maximum efficiencies in the reporting process

It is important to ensure that any sustainability reporting scheme is comprehensive and efficient. As noted above, efficiency could be enhanced by incorporating environmental impact reporting into a single annual triple bottom line reporting scheme. Efficiency is important, however it is essential that public agencies adequately and comprehensively meet their reporting obligations. The EDO notes some concerns with the current Commonwealth mandatory reporting regime for the public sector that is set out in Section 516A of the *Environmental Protection and Biodiversity Conservation Act 1999*. The agencies that have to report often report only limited information. Some agencies report by referring to the report of the previous year, or simply utilise a 'tick a box' approach. The EDO submits that content of reports should be comprehensive, and the information should be formulated openly and not with a mere 'yes or no' answer. It cannot be sufficient to refer to a previous report due to time constraints. Report should be reassessed every year and the next year's report should include the initiatives that have been introduced in that year to reduce the environmental footprint of the agencies.

In order to ensure that agencies comply with their environmental impact reporting obligations, the EDO submits that environmental auditing by an independent body, such as the NSW Audit Office, is needed under any NSW scheme.¹² The problems with the Commonwealth regime show that an adequate enforcement body is needed to ensure that the triple bottom line reporting requirements are met. The 2005 Report recommended that all sustainability reports should be audited to ensure consistency of approach and to improve rigour in reporting standards.¹³ Furthermore, it noted that verification of reports is important to ensure that the community has confidence in reporting standards and processes.¹⁴ The EDO supports these findings, and submits that independent auditing is an essential element of a TBL reporting scheme in NSW.

¹¹ Recommendation 4, page ix.

¹² Gregory Rose, 'Environmental performance auditing government – the role for an Australia Commissioner for the Environment' (2002) 18(2), *Environmental and Planning Law Journal* pp129-149 at 149.

¹³ *Sustainability Reporting in the NSW Public Sector*, p36.

¹⁴ *Ibid.*

7. Significant developments in other jurisdictions

Mandatory environmental impact reporting schemes exist in several other jurisdictions in Australia and abroad.¹⁵ One particular example discussed above is the Commonwealth reporting scheme under Section 516A of the *Environmental Protection and Biodiversity Conservation Act*. The EDO notes that although there are some problems with the implementation of this scheme, it provides a good example of the type of TBL reporting scheme that needs to be introduced in NSW.

Moreover, there are international guidelines on TBL reporting. These internationally recognised standards are found in the Global Reporting Initiative (GRI). Its goal is expressed thus:

*The Global Reporting Initiative's (GRI) vision is that reporting on economic, environmental, and social performance by all organisations becomes as routine and comparable as financial reporting.*¹⁶

The GRI sets out triple bottom line requirements through its Sustainability Reporting Guidelines. The guidelines require performance assessment and disclosure of economic, environmental and social policies, activities and impacts. More than 2400 organisations from 60 countries use these guidelines to produce their sustainability reports.¹⁷ Of particular relevance, the GRI has produced specific guidelines for public agencies.¹⁸ These guidelines emphasise certain key reporting principles that should inform public sector reporting. These include transparency, auditability, completeness and accuracy.¹⁹ The EDO is of the view that these GRI guidelines should be used to inform a public sector reporting scheme in NSW.

Should you have any questions regarding this submission please contact Robert Ghanem on robert.ghanem@edo.org.au or (02) 9262 6989.

Yours sincerely

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¹⁵ Western Australia's *State Sustainability Framework*, Victoria's Centre for Public Agency Reporting, South Australia's Office of Sustainability, Canada's Commissioner for the Environment and Sustainable Development.

¹⁶ <http://www.globalreporting.org/Home> (6 November 2007).

¹⁷ These can be viewed at the GRI Reports database.

¹⁸ Global Reporting Initiative,

<http://www.globalreporting.org/ReportingFramework/G3Online/SectorSupplements/>.

¹⁹ *Ibid.* See page 22 for an in depth discussion of these key principles.