



BRIEFING NOTE

Improving the NSW Independent Planning Commission Public Hearing

July 2023

About Centre for Public Integrity

The Centre for Public Integrity (**CPI**) is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. The CPI is a collaboration of former judges and integrity experts, led by its Board whose members include the Hon Anthony Whealy KC, the Hon Stephen Charles AO KC, Professor George Williams AO, Professor Joo Cheong Tham, Professor Gabrielle Appleby and Geoffrey Watson SC. Former members include the Hon Tony Fitzgerald AC KC and the Hon David Ipp AO KC.

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About EDO

The Environmental Defenders Office (**EDO**) is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a community legal centre dedicated to protecting the environment.

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Executive Summary

Public participation in decision-making is invaluable to any democratic society. In relation to proposals for major projects and State Significant Development in New South Wales, we consider the restoration of rights to merits review to be the crucial reform required to facilitate meaningful public participation in the planning system.

In the absence of restoring merits review rights, we consider the next best reforms would be to improve the public hearing processes of the New South Wales Independent Planning Commission (IPC), which acts as the consent authority for certain State significant and other development applications.¹ These reforms form the focus of this Briefing Note.

For such development applications, IPC public hearings represent one of the few remaining points in the development assessment process for the public to participate in decision-making. This is because merits review rights are restricted following a public hearing of the IPC.

The Environmental Defenders Office (EDO) and Centre for Public Integrity (CPI) submit that the legislation and policies that govern the IPC public hearing and consideration of expert evidence lack clarity and robustness. This becomes apparent when compared to other Australian jurisdictions that have legislation and policies more suited to the important role of public hearings and the giving (and testing) of expert evidence. Without these controls, the IPC's efficiency, accountability and ability to facilitate public participation is impacted.

This Briefing Note makes several recommendations aimed at improving clarity and robustness regarding the IPC's conduct of public hearings and consideration of expert evidence. In our view, the IPC should be supported and adequately resourced so it can discharge its role as an independent decision-maker and to improve the way in which it carries out its public hearings within a transparent and accountable regulatory framework.

This paper recognises the distinct roles and responsibilities of the Minister for Planning (**the Minister**) and the IPC in relation to public hearings. Accordingly, we make separate recommendations to the Minister for Planning for legislative reform and to the IPC for policy reform.

Our key recommendations are as follows:

- 1) In relation to public hearings, we recommend that the Minister amend the *Environment Planning and Assessment Act 1979* (NSW) (**EP&A Act**) and the *Environment Planning and Assessment Regulation 2000* (NSW) (**EP&A Reg**) to explicitly provide that:
 - a) The IPC can give directions about the conduct of its public hearings;
 - b) The IPC can hold directions hearings;
 - c) The IPC can take evidence on oath or affirmation; and
 - d) The IPC must observe the rules of natural justice and procedural fairness.
- 2) In relation to public hearings, we recommend that the IPC issue a detailed Practice Note in relation to expert evidence, detailing:
 - a) The duty and role of expert witnesses;
 - b) The requirements for the preparation of expert witness statements;
 - c) Provisions for the IPC panel to direct joint expert reports and peer review evidence; and
 - d) Provisions for the parties to cross-examine² expert witnesses – including directions as to time limits and permitted topics.

This Briefing Note is structured as follows:

- A. Introduction – public participation and expert evidence
- B. Conduct of public hearings
- C. Testing expert evidence
- D. Practical implications for reform

A. Introduction – public participation and expert evidence³

In 2018, the IPC replaced the former Planning Assessment Commission (**PAC**), which originally commenced operation on 3 November 2008 following the 2008 NSW planning reforms.⁴ While the powers and functions of the IPC and the PAC are different, the IPC is, and the former PAC was, an executive decision-making body separate from the Minister or the NSW Department of Planning and Environment (**the Department**) with the power to inquire into or review planning matters, and/or make planning decisions under the EP&A Act.

The IPC must only hold a public hearing in two circumstances:

- 1) When the IPC is requested to do so by the Minister under s 2.9(1)(d) of the EP&A Act;⁵ or
- 2) When “the Minister has determined in a gateway determination that the Commission [IPC] is to conduct a public hearing into a planning proposal for provisions of a local environmental plan”.⁶

Once the IPC conducts a public hearing, s 8.6(3)(a) the EP&A Act precludes any merits appeal against the IPC’s determination of the development application. Therefore, the IPC public hearing represents the final opportunity for the proponent, objectors, and other stakeholders to present evidence and provide submissions on the substantive merits of a proposed development. Otherwise, litigants are limited to challenging a proposed development from the “straight-jacket” of judicial review.⁷

Public participation in the planning decision-making process is enshrined in legislation. An object of the EP&A Act is “to provide increased opportunity for community participation in environmental planning and assessment”.⁸ In determining a development application, a consent authority (including the IPC) is to take into consideration “any submissions made in accordance with [the EP&A Act] or the regulations” and “the public interest”.⁹ The public interest “includes community responses regarding the project for which approval is sought”.¹⁰

The rationale for public participation in planning decisions is that those who are affected by a decision have a right to be involved in the decision-making process.¹¹ This is reflected in the IPC’s objectives to encourage effective community and other stakeholder participation to inform its determinations and advice.¹²

Ideally, a public hearing facilitates meaningful public participation in its processes by:¹³

- Having clear procedural guidelines for both pre-hearing processes and the hearing itself;
- Making provision for certain types of evidence to be taken on oath or affirmation; and
- Ensuring such evidence is subject to rigorous testing.

Enhancing public participation not only seeks to promote inclusiveness and representation of community interests but also increases the legitimacy of decisions. Notably, Chief Judge Brian J Preston SC of the Land and Environment Court



has observed extra-curially that greater levels of public participation in decisions concerning the use of land and its resources leads to a greater level of community satisfaction.¹⁴ This increase in community satisfaction also leads to a greater public acceptance of a decision even if it is unfavourable.¹⁵ In contrast, where there is a lack of opportunities for the community to participate in the decision making-process, community members may turn to public interest-based litigation with the aim of addressing their concerns.¹⁶

While public participation is integral to the IPC public hearing process, the interest of community members at these proceedings must be balanced with the need to adequately address expert evidence. The value of expert evidence to the IPC lies in the technical perspective it can bring to the complex environmental, social and economic impacts of a proposed development.¹⁷ When commissioned independently by an objector, such evidence may serve as an important counterpoint to the evidence tendered by the proponent and, in some instances, by the Department, which may be in favour of a particular development application. This would in turn promote procedural fairness.

However, experts at IPC public hearings are often granted inadequate time, usually 15 minutes or less, to present complex issues and there is no opportunity for parties to cross-examine them where contention arises. This includes circumstances where there may be considerable difference of opinion between experts on matters vital to the IPC's consideration of a project, such

as the extent of any environmental risk, and the possible consequences of that risk. Given the lack of any merits appeal following a public hearing, it is imperative that the IPC properly test expert evidence within the hearing itself to ensure fairness and accountability. This process would equally assist the proponent, the Department and objectors to understand the issues more comprehensively.



B. Conduct of public hearings

In terms of robustness, efficiency and accountability, the legislation and policies underpinning the IPC's conduct of public hearings are unclear and insufficiently rigorous compared to the legislation and policies that govern Victorian Planning Panels and Environment Effects Inquiries and the Tasmanian Planning Commission.¹⁸

While clause 8(a) of schedule 2 of the EP&A Act states that regulations may provide for the "procedures for public hearings", the EP&A Reg is silent on IPC public hearing procedures. Furthermore, the IPC's "Public Hearing Guidelines" fall short of the detail provided for comparable bodies in Victoria (Victorian Planning Panels) and Tasmania (Tasmanian Planning Commission).

We submit there are several major problems with the legislative framework:

- Notably, there is no explicit provision in either the EP&A Act or EP&A Reg that gives the IPC a general power to give directions about the conduct of its public hearings or hold a directions hearing.¹⁹
- The legislative framework similarly fails to provide for the receipt of evidence on oath or affirmation – a requirement that may bolster the reliability and credibility of evidence received during the hearing.²⁰
- There is no express requirement in either the EP&A Act or the EP&A Reg for the IPC to observe the rules of natural justice or procedural fairness.²¹



Comparison with legislation and policies in Victoria and Tasmania

In comparison to the NSW legislative framework, Victoria and Tasmania provide better approaches that enshrine the rules of natural justice and procedural fairness explicitly in the legislation that governs planning bodies. The relevant legislative provisions and policies are set out below.

	Victorian Planning Panels	Victorian Environment Effects Inquiries	Tasmanian Planning Commission	NSW IPC
Power to hold a directions hearing	<p>Section 159(1)(c) of the <i>Planning and Environment Act 1987</i> (Vic) (P&E Act) provides that a panel may give directions about “the conduct of hearings, including the manner by which hearings are conducted, whether in person or by audio link or audio visual link”.</p> <p>Section 159(1)(b) of the P&E Act states that panels may give directions about “matters preliminary to hearings”. In this regard, Planning Panels Victoria states its usual practice is to hold a directions hearing.²²</p> <p>Planning Panels Victoria provide that a directions hearing, where held, should discuss the evidence parties wish to call at the public hearing.²³</p>	<p>The Victorian Minister for Planning can appoint an inquiry under s 9(1) of the <i>Environment Effects Act 1978</i> (Vic) (EE Act) to analyse the environmental effects of any works or proposed works to which the EE Act applies.²⁴</p> <p>Planning Panels Victoria states that “similar procedures are followed” for both Planning Panels and Environment Effects Inquiries.²⁵</p>	<p>Section 10(1) of the <i>Tasmanian Planning Commission Act 1997</i> (Tas) (TPC Act) provides that the procedure at a Tasmanian Planning Commission hearing is “subject to section 11 of TPC Act, to be determined by the Commission”. The TPC may hold a directions hearing if “there are a large number of representations”.²⁶</p> <p>The TPC states in Practice Note 1 that a directions hearing, where held, should discuss the scope of issues to be explored and availability of expert evidence.²⁷</p>	N/A
Power to take evidence on oath or affirmation	N/A	N/A	Section 11(5) of the TPC Act allows the Tasmanian Planning Commission to “take evidence on oath or affirmation”.	N/A

	Victorian Planning Panels	Victorian Environment Effects Inquiries	Tasmanian Planning Commission	NSW IPC
Express requirement to observe rules of natural justice and procedural fairness	<p>Section 161(1) of the P&E Act states that in hearing submissions, a panel:</p> <p>“(a) must act according to equity and good conscience without regard to technicalities or legal forms; and</p> <p>(b) is bound by the rules of natural justice; and</p> <p>(c) is not required to conduct the hearing in a formal manner; and</p> <p>(d) is not bound by the rules or practice as to evidence but may inform itself on any matter –</p> <p>(i) in any way it thinks fit; and</p> <p>(ii) without notice to any person who has made a submission.”</p>	<p>Planning Panels Victoria states that “similar procedures are followed” for both Planning Panels and Environment Effects Inquiries.²⁸</p>	<p>Section 10(1)(b) of the TPC Act provides that when the Commission holds a hearing, it:</p> <p>“(i) may inform itself about any matter in any way it thinks fit;</p> <p>(ii) may receive oral or written evidence; and</p> <p>(iii) may consult with such persons as it thinks fit; and</p> <p>(iv) is not bound to act in a formal manner; and</p> <p>(v) must observe the rules of natural justice; and</p> <p>(iv) is not bound by the rules of evidence.”</p>	N/A
Practice Notes and Guidelines	<p>Planning Panels Victoria provides several detailed guides, a Practice Note on Expert Evidence, and a Practice Note on Hearing Requirements for Environment Effects Statement Projects on its website.²⁹</p>	<p>Under s 10(1) of the EE Act, the Minister has the power to “lay down guidelines for or with respect to any matters he considers expedient to enable the carrying out of this Act”. This may include “public consultation to be undertaken in relation to works to which this Act applies” (Section 10(1)(ba)(ii) of EE Act) and “any information or other matter he considers could be of assistance” (Section 10(1)(d) of EE Act).</p>	<p>The Tasmanian Planning Commission outlines the procedures for its hearings in various Practice Notes.</p>	N/A

Recommendations for Reform

For the Minister

We recommend that the EP&A Act and EP&A Reg be strengthened by providing explicitly that the IPC may:

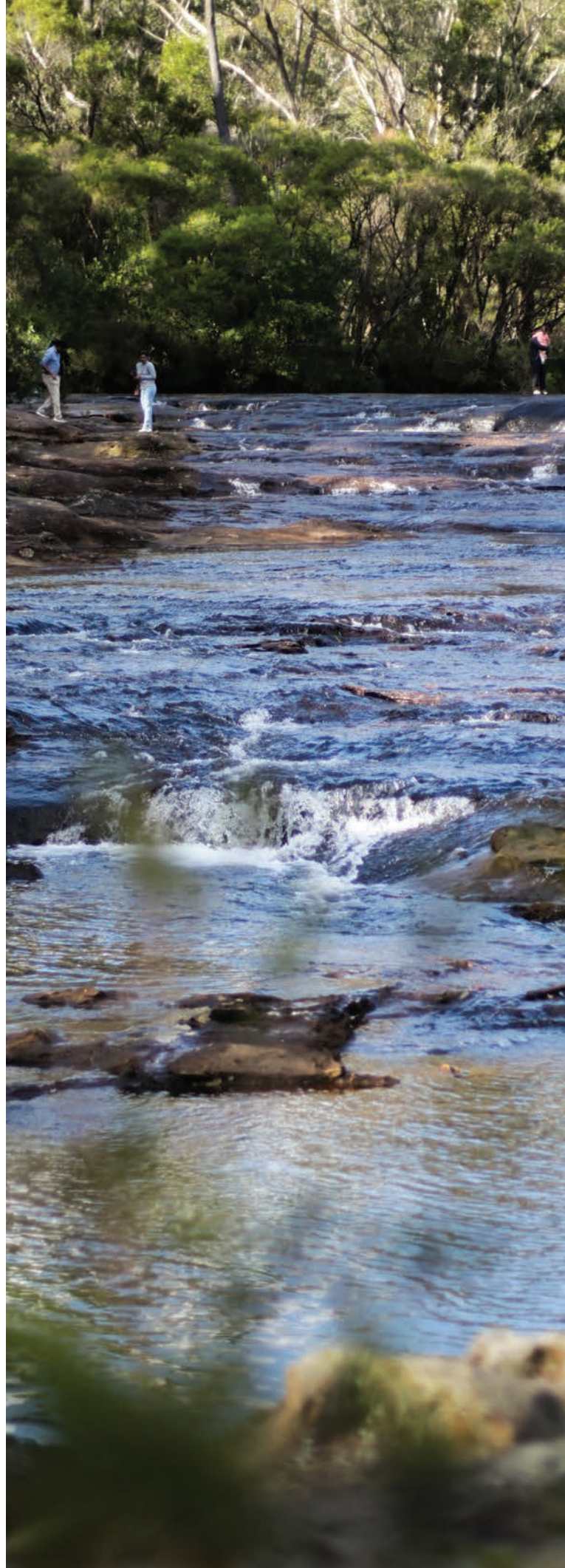
- Give directions about the conduct of its public hearings;
- Hold directions hearings; and
- Take evidence on oath or affirmation, including the examination and cross-examination of experts pursuant to directions from the IPC as to reasonable time limits, and topics to be covered.

These reforms would empower the IPC to provide greater clarity, efficiency and accountability to public hearing processes and improve the integrity of evidence it receives. We note that the Independent Productivity Commission's 2019 review of the IPC recommended facilitating a more interrogative hearing process.³⁰

In addition, a provision equivalent to s 161(1) of the P&E Act or s 10(1)(b) of the TPC Act should be enacted with respect to the IPC, particularly an express requirement for the IPC to observe the rules of natural justice and procedural fairness.

For the IPC

We recommend that the IPC issue detailed Practice Notes, such as PNVCAT2 - Expert Evidence in Victoria and Practice Note 14 - Expert Evidence in Tasmania, to provide the proponent, the Department and members of the community with more clarity as to the conduct of public hearings. Practice Notes would improve the robustness of the IPC public hearing and promote better public participation in alignment with the IPC's objective to encourage effective community and stakeholder participation.³¹



C. Testing expert evidence

The value of expert evidence to the IPC lies in the technical perspective it can bring to the often complex environmental, social and economic impacts of a proposed development.³²

Despite its importance, there is no express reference to expert evidence in the EP&A Act, the EP&A Reg, or the IPC's own "Public Hearing Guidelines".³³ This serious omission in the legal and policy framework means that the IPC's approach to expert evidence is unclear to persons appearing before an IPC public hearing. Moreover, the framework lacks robustness compared with comparable bodies in Victoria and Tasmania, particularly in relation to:

- The duty and role of expert witnesses;
- Expert witness statements and directions hearings;
- Joint expert reports and peer review of expert evidence; and
- Cross examination of expert witnesses.



Comparison with legislation and policies in Victoria and Tasmania

Each aspect of expert evidence is analysed below with respect to legislation and policies in Victoria and Tasmania.

	Victorian Planning Panels and Environment Effects Inquiries	Tasmanian Planning Commission	NSW IPC
The duty and role of expert witnesses	<p>Planning Panels Victoria (PPV) Practice Note 1 states:</p> <p>“An expert witness:</p> <ol style="list-style-type: none"> has a paramount duty to PPV and not to the party retaining the expert has an overriding duty to assist PPV on matters relevant to the expert’s expertise is not an advocate for a party to a proceeding.”³⁴ 	<p>Practice Note 14 states:</p> <p>“The role of experts is to assist the Commission to determine matters before it. An expert witness has a duty to provide independent expert advice, even though they are engaged and paid for by the parties.”³⁵</p>	N/A
Expert witness statements	<p>Expert Evidence – PPV Practice Note 1 sets out requirements for the preparation of expert witness statements including the content and form of the statement or report.³⁶</p>	<p>Part 2 of Practice Note 14 sets out requirements for the preparation of expert witness statements including methodology.³⁷</p>	N/A
Joint expert reports and peer review of expert evidence	<p>Expert Evidence – PPV Practice Note 1 states:</p> <p>“16. Expert witnesses retained by parties are encouraged to meet to narrow any points of difference between them and to identify any remaining points of difference. Experts may be directed to meet.</p> <p>17. If expert witnesses meet, they must each set out in writing by a document filed with the Panel any agreed points and all remaining points of difference.</p> <p>18. If any expert witness directed by the Panel to meet with any other expert is instructed not to reach agreement in respect of points of difference, the fact of such instructions must be reported in writing to the Panel by the expert witness.”³⁸</p>	<p>Practice Note 14 states:</p> <p>“Where more than one party has an expert from the same discipline, the Commission may use a number of techniques to assist it to better understand differences of opinion. For example, it may direct the experts to confer, with or without the parties present, to compile a statement of agreed facts and opinions to minimise the time taken hearing evidence about matters that are not in dispute.</p> <p>Where there is only one expert and the Commission has reservations about the adequacy of the expert’s evidence, the Commission may direct a peer review of the evidence be provided by a suitably qualified expert acceptable to the Commission”.³⁹</p>	N/A

	Victorian Planning Panels and Environment Effects Inquiries	Tasmanian Planning Commission	NSW IPC
Cross examination of expert witnesses	<p>Section 161(3) of the P&E Act allows a Victorian Planning Panel to:</p> <p>“Prohibit or regulate cross-examination in any hearing”.</p> <p>PPV’s Guide to the Public Hearing states:</p> <p>“Only expert witnesses can be cross-examined through questioning. No cross-examination of submitters or their advocates (including the Proponent) will be permitted. Questions to witnesses will only be permitted at the discretion of the Panel. ... Only the Panel may ask questions of advocates and individual submitters. However, points of clarification may be put to a submitter or advocate through the Chair and at the Chair’s discretion.”⁴⁰</p>	N/A	<p>In accordance with its Public Hearing Guidelines:</p> <p>“As part of these formal proceedings Commissioners may – or may not – ask a question or seek clarification from speakers.</p> <p>The Commission may engage the use of a Counsel Assisting to assist the Commission Panel in the conduct of the public hearing. The Counsel Assisting may ask questions or seek clarification from speakers. No questions or cross-examination will be permitted from others in attendance.”⁴¹</p>

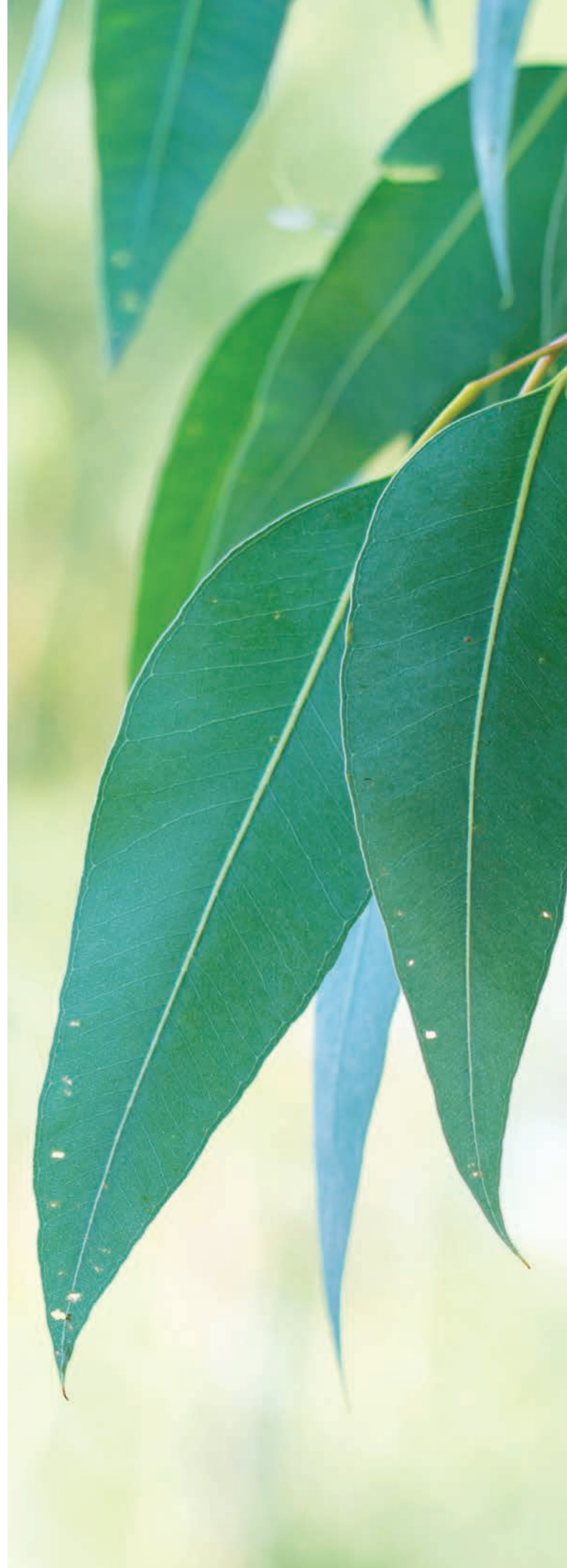


Recommendations for Reform

We recommend that the IPC publish a Practice Note that deals specifically with expert evidence, like in Victoria and Tasmania. This should include:

- A description of the duty and role of expert witnesses;
- An outline of the requirements for the preparation of expert witness statements;
- Provision for the IPC panel to direct joint expert reports and peer review evidence; and
- Provision for parties to cross-examine expert witnesses.

These measures would enable the IPC to test expert evidence with greater rigour and improve public participation. Importantly, the provision of joint expert reports where appropriate would be an invaluable tool for the IPC for its assessment (including the timeliness of assessment) of expert evidence, as it would provide the decision makers with a list of matters both agreed and not agreed, and reasons why. “The ability to examine expert witnesses on contested topics is an essential foundation for achieving an adequate and procedurally fair public hearing.”



D. Practical implications for reform

In our view, the recommendations of this Briefing Note are consistent with the IPC's compliance with the Minister's Statement of Expectations and Memorandum of Understanding with the Department of Planning and Environment (**MOU**)⁴² – in particular, the commitments under the MOU to strengthen public trust and effective community and stakeholder participation in IPC processes. Application processing timeframe requirements must not prevent the rigorous testing of expert evidence and community involvement in a full, fair and final merits hearing. The recommendations of this Briefing Note will serve to improve the timeliness, efficiency and robustness of IPC determinations by improving the conduct of public hearings – particularly in relation to hearing and testing expert evidence.





Endnotes

¹ IPC public hearings are to be distinguished from the IPC's public meetings, which are conducted at the IPC's discretion with no effect on merits appeal rights: Independent Planning Commission, "Public Meeting Guidelines" (1 April 2022), 1 <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2022-policy-documents/220401public-meeting-guidelinesfinal.pdf?la=en&hash=AF8778E17A3F4F470756B72778521DE9>>

² For the purposes of executive decision making, the term "cross-examination" may not be entirely apt, but is used here for ease of reference.

³ See Schedule 2 of the *Environmental Planning and Assessment Amendment Act 2017*, which inserted Part 2, Division 2.3 into the *Environmental Planning and Assessment Act 1979*.

⁴ See *Environmental Planning and Assessment Amendment Act 2008*.

⁵ *Environmental Planning and Assessment Act 1979* (NSW) sch 2 cl 3(1)(a).

⁶ *Environmental Planning and Assessment Act 1979* (NSW) sch 2 cl 3(1)(b).

⁷ Chris McGrath, "Flying Foxes, Dams and Whales: Using Federal Environmental Laws in the Public Interest" (2008) 2(5) *Environmental and Planning Law Journal* 324, 330.

⁸ EP&A Act, s 1.3(j).

⁹ EP&A Act, ss 4.15(1)(d)-(e).

¹⁰ *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited* (2013) 194 LGERA 347; [2013] NSWLEC 48, [63].

¹¹ See IAP2 Core Values of the International Association for Public Participation, <<https://iap2.org.au/about-us/about-iap2-australasia/core-values/>>. Also, a fundamental element of the Aarhus Convention on public participation in environmental decision-making: United Nations *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) article 2.

¹² Hon Rob Stokes MP, "Statement of Expectations for the Independent Planning Commission", <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ministers-statementofexpectationsfor-ipc>>.

¹³ Matt Floro et al, "Improving the NSW Independent Planning Commission public hearing: a comparative study" (2021) 36(1) *Australian Environment Review* 2.

¹⁴ The Hon Justice Brian J Preston, "The adequacy of the law in satisfying society's expectations for major projects" (2015) 32(3) *Environmental and Planning Law Journal* 182,188.

¹⁵ Guy J Dwyer, "Emerging legislative regimes for regulating carbon capture and storage activities in Australia: to what extent do they facilitate access to procedural justice" (2015) 32(1) *Environmental and Planning Law Journal* 3, 29-30.

¹⁶ Guy J Dwyer, "Emerging legislative regimes for regulating carbon capture and storage activities in Australia: to what extent do they facilitate access to procedural justice" (2015) 32(1) *Environmental and Planning Law Journal* 3, 29-30.

¹⁷ Matt Floro et al, "Improving the NSW Independent Planning Commission public hearing: a comparative study" (2021) 36(1) *Australian Environment Review* 2.

¹⁸ Matt Floro et al, “Improving the NSW Independent Planning Commission public hearing: a comparative study” (2021) 36(1) *Australian Environment Review* 2.

¹⁹ Matt Floro et al, “Improving the NSW Independent Planning Commission public hearing: a comparative study” (2021) 36(1) *Australian Environment Review* 2; Cf EP&A Act (n 1) cl 8(a) of Sch 2. However, it may be argued that the IPC has a general power to give directions about the conduct of its public hearings as an incident of its power under s 2.9(1)(d) “to hold a public hearing into any matter into which the Minister requests the Commission to hold a public hearing”.

²⁰ For example, by discouraging practices such as providing false or exaggerated information that detracts from the integrity of evidence received during public hearings, explored in A Enriquez-de-Salamanca “Stakeholders’ Manipulation of Environmental Impact Assessment” (2018) 68 *Environmental Impact Assessment Review* 10.

²¹ Although an administrative decision, the IPC’s determination of a development application which affects an individual’s rights, interests or legitimate expectations will attract a common law duty to accord procedural fairness unless the rule of procedural fairness is abrogated by statute (which it is not); See eg, *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636; 130 ALD 1; 290 ALR 616; [2012] HCA 31; BC201206650. Therefore, the legislative framework’s silence may create an ambiguity that leaves the duty to afford procedural fairness vulnerable to challenge.

²² Planning Panels Victoria, “What is a Panel?” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/what-is-a-planning-panel>

²³ Planning Panels Victoria, “Expert Evidence – PPV Practice Note 1” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/expert-witnesses>

²⁴ Further information can be found at Planning Panels Victoria, “Types of panels and committees” (25 June 2020), <https://www.planningpanels.vic.gov.au/guides-and-resources/types-of-panels>

²⁵ Planning Panels Victoria, “What is a Panel?” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/what-is-a-planning-panel>

²⁶ See eg, Tasmanian Planning Commission, “Practice Note 1 — Planning Scheme Amendments” (March 2020), 4, <www.planning.tas.gov.au/_data/assets/pdf_file/0009/582228/Practice-Note-1-Planning-Scheme-Amendments-March-2020.PDF>; Tasmanian Planning Commission, “Practice Note 12 — Local Provisions Schedule Amendments” (November 2021), 5, <https://www.planning.tas.gov.au/_data/assets/pdf_file/0010/582238/Practice-Note-12-LPS-amendments,-November-2021.PDF>.

²⁷ Tasmanian Planning Commission, “Practice Note 1 — Planning Scheme Amendments” (March 2020), 4, www.planning.tas.gov.au/_data/assets/pdf_file/0009/582228/Practice-Note-1-Planning-Scheme-Amendments-March-2020.PDF; Tasmanian Planning Commission, “Practice Note 12 — Local Provisions Schedule Amendments” (November 2021), 5, <https://www.planning.tas.gov.au/_data/assets/pdf_file/0010/582238/Practice-Note-12-LPS-amendments,-November-2021.PDF>.

²⁸ Planning Panels Victoria, “What is a Panel?” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/what-is-a-planning-panel>

²⁹ Planning Panels Victoria, “What is a Panel?” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/what-is-a-planning-panel>; Planning Panels Victoria, “Guide to the public hearing” (30 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/how-public-hearings-work>; Planning Panels Victoria, “Expert Evidence – PPV Practice Note 1” (29 June 2022), https://www.planningpanels.vic.gov.au/___data/assets/pdf_file/0026/593333/ppv-pn01-expert-evidence.pdf; Planning Panels Victoria, “Hearing Requirements for EES Projects – PPV Practice Note 2” (29 June 2022), <https://www.planningpanels.vic.gov.au/guides-and-resources/hearing-requirements-for-in-person-online-or-hybrid-hearings>

³⁰ NSW Productivity Commission, “Review of the Independent Planning Commission” (December 2019), recommendation 11, <https://www.productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf>

³¹ Hon Rob Stokes MP, “Statement of Expectations for the Independent Planning Commission”, <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ministers-statementofexpectationsfor-ipc.pdf?la=en&hash=42A69A4DAE0C7DC67C69BF671B30B58B>>.

³² Matt Floro et al, “Improving the NSW Independent Planning Commission public hearing: a comparative study” (2021) 36(1) *Australian Environment Review* 2, 4; See eg, V McGuinness and M Raff, “Coal and Climate Change: A Study of Contemporary Climate Litigation in Australia” (2020) 37(1) *Environmental and Planning Law*

Journal 87, 118; discussing *Gloucester Resources Ltd v Minister for Planning* [2019] NSWLEC 7; (2019) 234 LGERA 257.

³³ Independent Planning Commission, “Public Hearing Guidelines” (1 April 2022), <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2022-policy-documents/220401public-hearing-guidelinesfinal.pdf?la=en&hash=6AC04F24CA3D8408689BB1915EDB1EE5>>.

³⁴ Planning Panels Victoria, “Expert Evidence – PPV Practice Note 1” (29 June 2022), <<https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides/expert-evidence>>.

³⁵ Tasmanian Planning Commission, “Practice Note 14 – Expert evidence” (April 2021), 2, <www.planning.tas.gov.au/___data/assets/pdf_file/0011/607934/Practice-Note-14-Expert-Evidence.pdf>.

³⁶ Planning Panels Victoria, “Expert Evidence – PPV Practice Note 1” (29 June 2022), https://www.planningpanels.vic.gov.au/___data/assets/pdf_file/0026/593333/ppv-pn01-expert-evidence.pdf

³⁷ Tasmanian Planning Commission, “Practice Note 14 – Expert evidence”, <https://www.planning.tas.gov.au/___data/assets/pdf_file/0011/607934/Practice-Note-14-Expert-Evidence.pdf>.

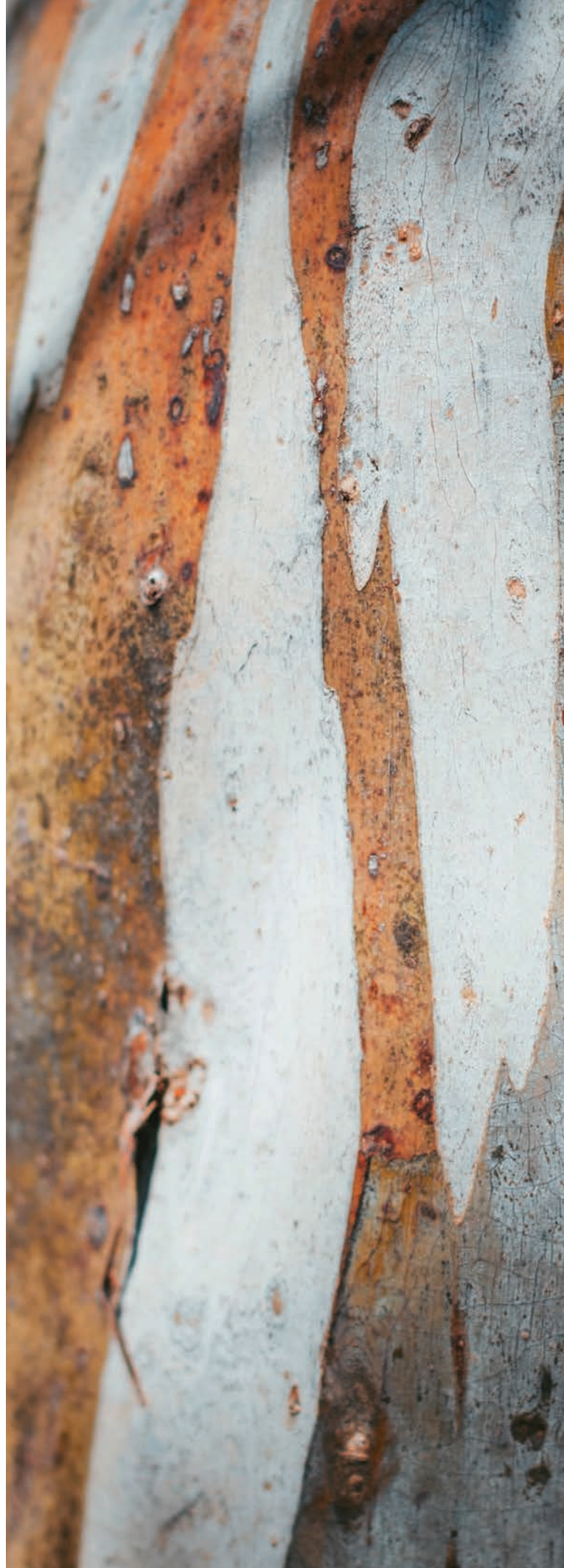
³⁸ Planning Panels Victoria, “Expert Evidence – PPV Practice Note 1” (29 June 2022), https://www.planningpanels.vic.gov.au/___data/assets/pdf_file/0026/593333/ppv-pn01-expert-evidence.pdf

³⁹ Tasmanian Planning Commission, “Practice Note 14 – Expert evidence” (April 2021), <www.planning.tas.gov.au/___data/assets/pdf_file/0011/607934/Practice-Note-14-Expert-Evidence.pdf>.

⁴⁰ Planning Panels Victoria, “G1 Guide to the Public Hearing” <https://www.planning.vic.gov.au/___data/assets/word_doc/0011/15131/G1-Guide-to-the-Public-Hearing-Apr-2017.DOCX>.

⁴¹ Independent Planning Commission, “Public Hearing Guidelines” (1 April 2022), 3, <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2022policydocuments/220401public-hearing-guidelinesfinalpdf?la=en&hash=6AC04F24CA3D8408689BB1915EDB1EE5>>. For further discussion, see NSW Productivity Commission, “Review of the Independent Planning Commission” (December 2019), 44–45, <www.productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf>.

⁴² Hon Rob Stokes MP, “Statement of Expectations for the Independent Planning Commission”, <<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ministers-statementofexpectationsfor-ipc.pdf?la=en&hash=42A69A4DAE0C7DC67C69BF671B30B58B>>; Department and IPC, “Memorandum of Understanding Between Department of Planning, Industry and Environment and Independent Planning Commission NSW in relation to planning and assessment matters under the *Environmental Planning & Assessment Act 1979* on 5 May 2020, <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/ipc-policies/march-2022/ipc_dppe-mou.pdf?la=en&hash=C802267020CDD98FOCB103114AC33D7A>.





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