Rapid Assessment Framework – Submissions Report

July 2021

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Introduction

In November 2020, the New South Wales (NSW) Department of Planning, Industry and Environment (the Department) exhibited the proposed Rapid Assessment Framework package (RAF).

The RAF was exhibited for eight weeks between 14 November 2020 and 12 February 2021.

This Submissions Report (Report) provides a summary of the key topics and common themes raised in submissions, and the Department's response.

Rapid Assessment Framework

The RAF is a suite of system improvements that aim to increase the efficiency of major project assessments and speed up assessment timeframes, while also improving assessment quality, engagement standards and customer service.

The RAF also aims to streamline the assessment of major projects by providing clear guidance on environmental impact assessment and introducing a new Registered Environmental Assessment Practitioners (REAP) Scheme to provide quality assurance for environmental impact statements (EIS).The exhibited RAF package included:

- **Proposed amendment to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and supporting Explanation of Intended Effect (EIE)** that outlines the policy changes required to implement the RAF, including industry-specific SEARs and guidance documentation.
- **Draft guides:** advice for major project proponents about key components of major projects assessment, the proposed registered practitioners EIS certification framework and cumulative impact assessment and how to engage with the community on major projects.
- **Sample sets of draft industry-specific SEARs:** intended to guide the preparation of an EIS for hospitals, warehouse and distribution centres as well as development within State Significant Precincts (SSPs).

Consultation

The Department sought public feedback on the draft RAF during public exhibition from 14 November 2020 to 12 February 2021. During the exhibition period, the Department received 74 submissions from a variety of stakeholders.

Restrictions on face-to-face engagement resulted in a reliance on online events and presence to promote and provide information on the RAF. In addition to public exhibition, information sharing and consultation was achieved through a number of online webinars, as shown in the following table.
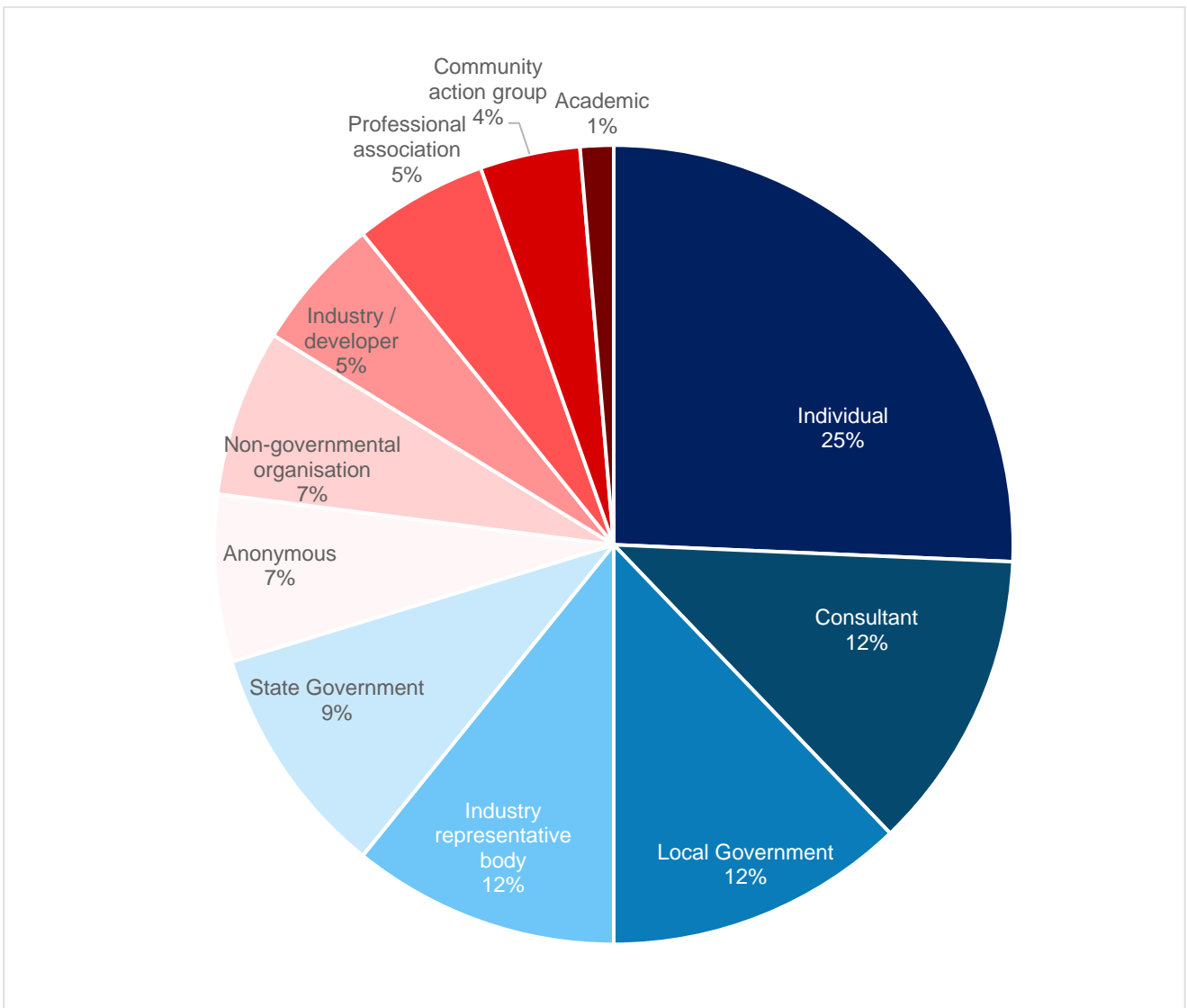
Date	Activity	Format	Participants/ engagement
5 March 2021	Post-exhibition engagement	Online webinar	Practitioners and consultants
3 March 2021	Post-exhibition engagement	Online webinar	Industry representatives
26 February 2021	Post-exhibition engagement	Online webinar	Community and environment groups
25 February 2021	Post-exhibition engagement	Online webinar	Peak bodies
4 February 2021	Exhibition engagement	Online webinar	PIA
29 January 2021	Exhibition engagement	Online webinar	EIANZ

In addition to the above the Department further engaged and shared information about the RAF with community groups, State and local government agencies and industry groups through a variety of informal engagement sessions. The RAF website was visited by over 2,000 people over the exhibition period. This Report is based on the contents of formal submissions received in response to public consultation.

Submissions overview

The Department received 74 submissions from a total of 73 respondents on the RAF. Submissions were received from a variety of stakeholders, including individuals, local and State government, community groups, industry, representative bodies, professional associations, academic institutions, non-for-profit organisations and impact assessment professionals.

The breakdown of respondent groups is shown in the figure below:[1]

Each submission was examined individually to understand the issues being raised. A review was undertaken to identify common and recurring topics. These topics form the structure of this Report.

The Department thanks all respondents for taking the time to carefully consider and provide feedback on the RAF and has reviewed all public submissions in detail. The suggestions, recommendations and comments contained in the submissions have informed the finalisation of the RAF package and its components.

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[1] Industry represents individual developers or organisations e.g. resource companies. Industry representative bodies refer to membership organisations that collectively represent a particular industry e.g. minerals council. Professional associations refer specifically to those organisations which provide professional accreditation.

Overview of Submissions

Overall principles and purpose

Strong support was received for the RAF as a suite of proposed system improvements that aim to increase the efficiency of major project assessments and improve assessment timeframes. Over 20 per cent of respondents supported the RAF's ambitions for the assessment process and requirements for State significant projects.

Support came from a broad range of respondents, including consultants and industry representative bodies, individuals, and professional associations, local and State Government.

Multiple respondents supported the RAF and thanked the Department for work undertaken, acknowledging the breadth of information and guidance material provided. A key focus of support was the objective of improved efficiency in major project assessment, including circumvention of delays in planning approval pathways and reduced assessment timeframes for major projects.

Three respondents indicated opposition to the RAF as a whole. These respondents were mixed in their reason for opposition, raising concerns that the reforms do not address existing issues or fail to achieve the objectives of 'rapid' assessment.

Overall, respondents supported the RAF's aims to improve efficiency, speed and transparency, as long as these attributes were not at the expense of a comprehensive assessment process.

Legislation and regulation

There was general support for the proposed streamlining measures including online lodgement, standardising forms and procedures for State significant development (SSD) and State significant infrastructure (SSI) applications, requests and documents, and publishing guidelines to improve the quality of environmental assessments. Some respondents called for greater transparency for SSD application requirements and standardisation between SSD and SSI.

Other respondents raised concerns that standardising SSI processes and requirements may reduce flexibility, such as mandating scoping reports in the regulations. Some also called for savings provisions to protect steps and documents already completed and recommended that departures from the EIA guidelines not be considered a breach of the legislation.

There was general support for introducing a 2-year expiry on SEARs to ensure they remain up-to-date and fit-for-purpose. Several respondents requested that the Secretary be able to extend SEARs beyond the 2-year timeframe to deal with exceptional circumstances.

Proposed changes to EIS contents (relating to feasible alternatives and evaluating proposals) were not supported by a number of respondents, who indicated that the intent and effect of the changes were unclear.

Various views were put forward on the REAP Scheme, including the view that the Department should centrally manage the scheme and allocate REAPs to proponents, as opposed to proponents being able to select their own REAPs. In relation to the Regulation, questions were raised about the distinction between the current EIS declaration requirement, and the proposed EIS certification by a REAP. Some respondents noted that the term certification is generally associated with third-party review functions, rather than a proponent's quality assurance check. Comments were also provided on potential accredited REAP Schemes, and whether they should be identified outside the Regulation to allow for regular review and update.

Department's response

A number of further changes to the Regulation have been made to address key concerns raised in submissions. These include:

- not mandating scoping reports for SSI in the Regulation, but still referring to them in the SSI Guidelines as part of the preliminary assessment process to inform the Department's preparation of environmental assessment requirements

- implementing the proposed 2-year expiry on SEARs to ensure that SSD and SSI EISs are based on relevant and up-to-date environmental considerations, but allowing the Secretary to be able to extend them by up to two years, noting that in practice, SEARs extensions are unlikely to be granted unless the EIS is close to being submitted or in other exceptional circumstances

- introducing sunset dates for SEARs that have already been issued before the RAF Regulation commences, to remove long-standing proposals that have been lingering in the system for several years and to assist in reducing the uncertainty felt by communities around the future uses of land within an area

- not proceeding with the initially proposed Regulation changes to EIS content related to feasible alternatives and evaluation of projects, but outlining the policy intent in the SSD Guidelines and SSI Guidelines

- more closely aligning the REAP EIS quality assurance checks with existing EIS declaration requirements, and including additional EIS matters (in the REAP Guidelines) for REAPs to check against

- identifying accredited REAP schemes on the NSW Planning Portal

- savings and transitional provisions to protect actions and documents already completed from the new requirements.

The Department is also keen to maintain transparency on major projects processes and will ensure that new matters, such as SSD application requirements, can be readily accessed and understood by the public. A Planning Circular will also be issued outlining the changes to major projects processes as a result of the RAF Regulation and related guidelines.

Industry-specific SEARs

The RAF introduces use of industry-specific SEARs for SSD that is wholly permissible, would not normally be designated development (but for s 4.10(2) of the EP&A Act), and is not a concept development application.

Support was received for streamlining assessment requirements and focusing time and effort on the matters that are common to each category of SSD. Some respondents expressed opposition to the use of industry-specific SEARs. There was concern that the approach would be too general and lead to site-specific considerations being overlooked. Others were concerned that local councils and agencies would not be consulted by the Department before SEARs were issued, leading to proponents failing to adequately assess impacts.

Several respondents expressed concern about the categories of development that may be eligible for industry-specific SEARs. This included concern that the categories of development were too broad, and that site-specific issues may not be adequately addressed in the industry-specific SEARs. Several respondents disagreed with the idea that development in certain categories of development could be considered 'lower impact', given the scale of all SSD DAs. Others requested confirmation of the categories of development for which industry-specific SEARs would be prepared.

There were mixed views on the requirements in the exhibited industry-specific SEARs, with some respondents stating that the SEARs were too detailed, while others sought for industry-specific SEARs to include all possible matters.

Department's response

Industry-specific SEARs have been prepared in consultation with key agencies and authorities to provide advice on the drafting and scope of industry specific SEARs. This has ensured that the assessment and documentation required by each set of industry-specific SEARs is responsive and proportionate to the type of development to which they will apply and reflects the requirements of all relevant agencies and authorities. Councils will also be notified by the Department when industry-specific SEARs are issued, and proponents will be required to engage with (and address issues raised by) the relevant councils during the preparation of the EIS.

Industry-specific SEARs will only apply to projects that are wholly permissible, would not normally be designated development (but for s 4.10(2) of the EP&A Act), and are not a concept development application. This means that only projects that are consistent with the underlying land use zoning and have impacts that are well understood and can be mitigated, will be eligible for industry-specific SEARs.

The Department has made numerous detailed refinements to the exhibited industry-specific SEARs for warehousing and distribution centres, hospitals and development within identified sites in response to feedback provided in submissions. It has also worked with key agencies to prepare similarly responsive and proportionate industry-specific SEARs for other types of SSD, including:

- development within key sites and identified precincts
- over-station development
- residential development by or on behalf of the Land and Housing Corporation
- warehouses and distribution centres
- hospitals, medical centres and health research facilities
- schools
- tertiary institutions, including universities and TAFEs
- theatres, cinemas, and music and concert halls
- convention and exhibition centres
- information and education facilities, such as museums, art galleries and libraries
- hotels
- build-to-rent housing
- data storage centres
- correctional centres and complexes.

The Department will not be preparing industry-specific SEARs for categories of development that do not fit the above-mentioned criteria and have greater environmental risks, such as mining, extractive industries and manufacturing. These types of development are better addressed with project-specific SEARs (which will continue to be prepared on a project by project basis in consultation with relevant agencies).

The industry-specific SEARS form part of a broader package of guidelines and system improvements in the RAF which will improve the quality of environmental assessment, while ensuring that time and effort is focused where it is most needed. They also enable meaningful engagement by requiring proponents to engage with councils, the local community, and key agencies while preparing an EIS.

State significant development (SSD) and State significant infrastructure (SSI) assessment

The RAF introduces new *State Significant Development Guidelines* (SSD Guidelines) and *State Significant Infrastructure Guidelines* (SSI Guidelines) that set out the steps for undertaking, exhibiting, reviewing, updating and assessing applications for SSD and SSI.

Comments received on the guidelines were generally supportive. Respondents found them to be comprehensive and provide useful guidance and structure to the assessment of State significant projects. However, there were a range of comments seeking either further guidance or clarification around a range of topics, including methodology, approach, consultation and engagement.

In relation to the scoping report, general support was expressed for the requirements set out by the guidelines. However, there was concern that the lack of a mandated methodology would allow the proponent too much control over the level of assessment. Opposing viewpoints were put forward on a range of issues, such as whether scoping reports had too much or too little detail, or whether too much or too little pre-scoping engagement was required by the guidelines.

In relation to undertaking an EIS, detailed comments were provided on a range of topics, including the information to be included in an EIS, building flexibility in the project description, consultation and engagement. Many comments sought that the Department include additional requirements or guidance to clarify specific issues such as the relationship between the guidelines and methodologies for specific assessment matters. In relation to the approach of requiring an evaluation of the development as a whole, some respondents noted that proponents should be able to advocate for and justify the proposal in the EIS.

There was also general support for the proposal to link the approval of a project to the project description. However, some respondents expressed concern with how the project description could potentially reduce flexibility for SSI projects.

The proposed changes to the provisions around analysis of alternative ways of undertaking the project was of particular interest to several respondents. Some respondents noted that the current approach was too focused on construction rather the design or outcomes. Others expressed concerns that the requirement was too onerous.

A large proportion of respondents also commented on submissions and amendment reporting requirements. Respondents largely commented on the timing, process and requirements for responses, with submissions variously seeking for the scope of responses to either be tightened further or expanded. There were also comments querying whether the amendment report and preferred infrastructure report (PIR) could be combined, as this was considered duplicative.

A number of other respondents requested clarity around post-approval monitoring of projects, particularly as they are constructed. Other comments were provided around the guidance for modifications, noting that the guidance had potential to be misleading as it followed a similar structure to the guidelines for amendment reports.

Across the board, respondents also provided a range of detailed comments on the specific wording or guidance in each set of guidelines.

Department's response

The SSD and SSI Guidelines provide clarity on the information to be provided in assessment documents while providing flexibility in how they can be applied to the circumstances of specific projects. The guidelines emphasise the important role of community engagement throughout the assessment of State significant projects and the need for assessment documents to demonstrate how issues raised have been addressed.

In relation to scoping reports, the guidelines acknowledge that detailed information may not be available at the scoping stage and detailed assessment is not required. This reflects the purpose of the scoping report to provide sufficient information, to allow the Department to obtain an understanding of the project and identify its likely impacts. It also reflects the scoping report as the first step in the assessment of State significant projects, followed by the EIS and other reports, which describe the project and its potential impacts in greater detail.

Understanding the scope of the project and how it changes over time is a key principle of the RAF. The project should be described in one location in the EIS – the project description chapter – with an updated consolidated version provided each time the description changes, for example, through an amendment report or a modification report. The project description is intended to provide the community and other stakeholders with a single, clear point of reference for the approved project, updated over time as the approved project is modified.

The guidelines are intended to work alongside existing assessment methods such as the Approved Methods for Modelling and Assessment of Air Quality in NSW, the Noise Policy for Industry and the Biodiversity Assessment Method. Specialist assessments undertaken in accordance with these methods should be summarised into the assessment documents in a way that is consistent, accurate and easy to understand.

Numerous updates been made to the detailed guidance appended to the SSD and SSI Guidelines in response to feedback provided by respondents. Key updates include:

- updating *Preparing an Environmental Impact Statement* (for both SSD and SSI) to require the inclusion of a non-technical plain-English summary that is clearly understood by the general public, as well as clarifying the scope and intent for consideration of feasible alternatives
- providing more articulate advice in *Preparing an Environmental Impact Statement* (for SSI) on the manner in which an SSI project can be described
- to reduce the need for separate post-EIS reports, refinements to the *Preparing an Amendment Report* and *Preparing a Preferred Infrastructure Report* (PIR) have clarified that amendments to an application can be documented in a PIR, where a PIR is required. This acknowledges that amendment reports and PIRs both deal with changes to the project's post-EIS exhibition
- updating *Preparing a Modification Report* to acknowledge the various categories of SSD modifications and the need to proportionately tailor the amount of information included in the Modification Report to the scope of the modification.

Cumulative impact assessment

The RAF includes the Cumulative Impact Assessment Guidelines (CIA Guidelines), which sets out the process for assessing and determining cumulative impacts.

Support was received for the formalisation of the CIA Guidelines as they were deemed to add robustness to the existing process. However, general concern was expressed that the CIA Guidelines are not sufficiently detailed, are only discretionary and as a result may not be enforceable.

Some respondents commented on matters relating to study area, items for assessment and data, noting that the study area should be determined in collaboration with the Department, and should be expanded or cross boundaries where there was potential for a wide area of impact.

Some respondents commented on the projects for inclusion in a CIA. Positive feedback was received, particularly regarding the inclusion of related development. However, some respondents queried the exclusion of concept applications, while some suggested that all DAs should be included.

Respondents commented that CIA should consider assessment of impacts for the lifecycle of a project's potential impact, rather than project itself. It was also raised that the baseline for CIA

should not only include future development, but also recently completed development for which the full extent of impacts is yet to be experienced.

Regarding the clarity of the CIA methodology, there were concerns that without details of how an assessment should be undertaken, the decision-making process may result in a subjective assessment from the Department. Further detail was requested on what would be considered an unacceptable cumulative impact, and how impacts should be prioritised and weighted.

Department's response

The CIA guidelines define different categories of cumulative impacts. It describes an approach to the assessment of cumulative impacts relevant to State significant projects, noting that cumulative impacts are most effectively addressed through strategic planning, assessment and management.

Further work has been done to clarify the project-based approach of the CIA Guidelines. This provides a clear structure, providing certainty to applicants, the community and regulators on the methodology for the assessment of cumulative impacts. This includes guidance on the types of matters that should be considered in an assessment, defining the study area, timeframes, relevant future projects, the approach to assessment and dealing with uncertainties. The guidance draws on project-based methodologies in other jurisdictions such as the UK Planning Inspectorate's *Advice note seventeen: Cumulative effects assessment relevant to nationally significant infrastructure projects.*

The approach described in the CIA Guidelines will work alongside established assessment methods for specific matters, such as the Approved Methods for the Modelling and Assessment of Air Quality in NSW, the Noise Policy for Industry and the Biodiversity Assessment Method.

The assessment of the merits of a project-based cumulative impact assessment will be undertaken in the context these and other relevant regulatory frameworks which establish impact assessment criteria. These are updated over time to reflect changing environmental conditions, new scientific evidence and community expectations.

Case studies have also been included to clarify the approach to cumulative impact assessment described in the guidelines.

Registered Environmental Assessment Practitioner Scheme

The REAP Scheme is a framework for registering suitably skilled, qualified and experienced practitioners to undertake quality assurance checks on environmental impact statements (EISs) for State significant projects.

The REAP Scheme was one of the RAF components commented on most by respondents. Over a third of respondents expressed mixed views on the REAP Scheme, with a roughly equal number of respondents supporting and opposing the scheme (across the full range of respondent types).

Of those who supported the scheme, there was agreement that it was a good way to ensure adequate capability for EIS preparation and assessment. Arguments in opposition generally revolved around concerns about difficulty of implementation or costs and delays being introduced as a result of the scheme.

Several respondents expressed concerns around outsourcing the REAP accreditation process, and a perceived 'lack of intended involvement' from the Department in the REAP Scheme. The majority of respondents noted the REAP Scheme should include significant participation from the Department. A specific suggestion was that the Department should centrally manage the scheme and allocate REAPs to proponents, as opposed to proponents being able to select their own REAPs.

There were a number of submissions, primarily from consultants, who commented on the certification criteria, particularly in relation to the proposed requirement for 10 years of experience. Respondents generally requested more flexibility, with some proposing a 5-year requirement.

There were also a range of detailed comments on the mechanics of the declaration process and its content, whether REAPs would need to be an independent third party, and how REAPs would be selected. Some respondents also raised concerns about liability, misconduct and complaints associated with the declaration process.

Department's response

The REAP Scheme provides a framework for accrediting professional schemes that have strong corporate governance, including a robust governing body, established codes of conduct, and clear and effective operational policies and procedures. It utilises management and accreditation frameworks provided by existing professional bodies to effectively and efficiently implement this foundational accreditation and quality assurance scheme for planning in NSW.

Two schemes managed by professional bodies have been identified as accredited REAP schemes. This accreditation follows an assessment by the Department and an evaluation panel against the REAP Scheme criteria and have been determined to be suitable for accreditation by the Planning Secretary.

The REAP criteria are designed to ensure that practitioners are suitably skilled to oversee State significant projects, which are often characterised by complex or contentious planning issues. While the Department has generally maintained the criteria as originally exhibited, they have been updated and strengthened in response to feedback. The updates to the criteria include:

- strengthening the governance, review and oversight requirements for REAP scheme providers by requiring additional information related to:
    - the organisation and governance of schemes
    - ethical and professional codes of conduct
    - complaints handling
    - periodic reviews
    - evaluation of applications
    - resources and timeframes
    - continuing professional development
    - registration renewal
    - pricing
- introducing a level of flexibility by allowing accredited REAP scheme providers discretion to waive qualification or experience requirements in exceptional circumstances where practitioners can demonstrate equivalent experience or skill/competency.

Each of the accredited REAP Schemes have formed certification/registration criteria in accordance with these requirements. All practitioners seeking certification or registration as a REAP will be evaluated against these criteria.

The REAP scheme will commence on 1 July 2022, to allow 12 months for the accredited schemes to certify or register an adequate number of qualified practitioners as REAPs. The Department will be closely monitoring the scheme to ensure that sufficient REAPs are available to provide declarations for all SSD and SSI projects.

In response to feedback, the Department has additionally:

- sought to provide greater clarity around the role of the REAP as providing a quality assurance declaration of an EIS, rather than certification

- has enhanced its intended monitoring of the progress and outcomes of the REAP Scheme. To ensure its successful ongoing operation and integrity it will now undertake a review on the first, third and fifth year after the scheme commences. Following each review, the Department may make changes to the overall operation of the REAP Scheme to ensure it remains effective.

The REAP declaration does not remove any of the Department's existing review and assessment responsibilities. Further, the new REAP declaration requirements supplement, but do not replace the existing EIS declaration of the provisions under section 10.6 of the EP&A Act.

Undertaking engagement

The RAF introduces the Undertaking Engagement Guidelines, which help set out the requirements for effective engagement on State significant projects.

Some respondents felt the Department, rather than the proponent, should identify relevant stakeholders, along with the scope and nature of engagement, noting that without the Department being directive, proponents may not meet requirements.

The guidelines include suggested approaches to engagement. Some respondents felt community information sessions, online meetings and the use of digital formats sometimes hinder meaningful discussion.

While there was general support for the concept of proportionate engagement, some respondents stressed the level of engagement should be driven by the scale of the project and community perception.

While there was general support for the inclusion of engagement requirements, some respondents felt references to best practice engagement (for example, IAP2 benchmarks) were needed.

Inconsistencies were noted regarding which engagement activities are mandatory, with suggestions to provide clarity on the status of requirements. There was concern that engagement requirements were described to appear as expectations only, with no certainty that adequate and appropriate consultation will occur.

Department's response

The Department will ensure that relevant stakeholders are consulted by setting clear requirements at the SEARs stage that proponents consult with relevant councils, agencies and the community, and to demonstrate how their engagement was consistent with the guidelines. Stronger references to the SEARs have been provided in the guidelines to highlight this link.

The guidelines require proponents to be mindful of their audience when planning engagement activities and require proponents to provide information in various formats to suit the needs of the people and groups they are engaging with. New material has been included in response to feedback, being:

- a section named 'Guidance for Proponents' that sets out the key factors proponents should consider when developing their engagement strategy
- further guidance on what is meant by proportionate engagement, noting the proposed engagement activities should be proportionate to the scale of the project, the likely impacts of the project and the likely interest the community might have in the project
- a reference to the core values and public participation spectrum of the International Association of Public Participation (IAP2).

Inconsistencies identified by respondents on engagement activities and requirements have been addressed and the language in Appendix A has been strengthened to make it clear what proponents are required to do.