

## CHAPTER FOUR

### ANALYSIS AND DISCUSSION: ELEVEN YEARS OF EIS PRACTICE IN SOUTH AUSTRALIA

In Chapter Three of this thesis, the main elements of completed EISs have been discussed under generic project groupings. It is apparent that apart from site specific differences in environmental issues, there are also a number of differences between the type of proponent, consultant, public involvement, timing, decision maker and the approval process. At the same time there are less definable differences in terms of liaison between the DEP and the proponents and consultants, inter-government department liaison and political involvement. This chapter attempts to address some of the more definable variables.

#### OVERVIEW

The generic project groupings associated with completed EISs are summarised in Table 4.1 below, which indicates those projects which have been approved, by what authority and under what section of the Planning Act. The largest group of EISs completed is for the marina projects (14), followed by the industrial projects (four), transmission lines (four), tourist projects (three), power related projects (two), urban projects (two) and then one EIS completed for each of the mining, water, waste and defence projects.

Table 4.1 indicates that 19 out of the 34 projects are private, 12 are State government and three local government. The table also indicates that only the private and local government projects have been rejected (six and one respectively), whereas all the State government projects have been approved. However, it should be noted that many of the State government projects are essentially public works.

The Planning Act has been the principal legislative basis for decisions on projects involving an EIS, although three projects were not dealt with under this planning legislation. Two projects were exempted from planning approvals under the Planning Act by Regulation 59. The first of these was the Wilpena Tourist project which was exempted from notification under Section 7 of the Planning Act (planning approval for Crown development) under Regulation 59(e). This regulation exempts development within a

TABLE 4.1 COMPLETED EISs IN SOUTH AUSTRALIA

	(proponent) <sup>1</sup>	(Section for decision in Planning Act) <sup>2</sup>	(decision making authority) <sup>3</sup>	(approval)	(number of public submissions)
<b>MARINAS</b>					
Porter Bay	G	Section 7	Cabinet	yes	8
Whyalla	LG	Section 63	Governor	yes	11
Jubilee Point	P	n/a	Cabinet	no	109/103 <sup>4</sup>
Sellicks	LG	Section 51	Governor	no	54 <sup>5</sup>
Glennelg Harbour	P	Section 51	Governor	no	54 <sup>5</sup>
Glennelg/West Beach	P	Section 51	Governor	no	54 <sup>5</sup>
Glennelg Ferry	P	Section 51	Governor	yes	54 <sup>5</sup>
Holdfast Quays	P	Section 51	Governor	no	54 <sup>5</sup>
Tumby Bay	LG	n/a	n/a	n/a	4
Walleroo	P	Section 47	SAPC	yes	7
Lincoln Cove II	P	n/a	n/a	n/a	8
Jane Eliza	P	Section 47	SAPC	yes	26
Wellington	P	Section 47	SAPC	no	19
Hindmarsh Is.	P	Section 51	Governor	yes	73
<b>INDUSTRIAL</b>					
Southern Cross	P	Section 51	Governor	yes	4
Apcel	P	Section 51	Governor	yes	25
Rare Earths	P	Section 51	Governor	yes	56
Tioxide	P	Section 51	Governor	yes	8
<b>TOURIST</b>					
Mt Lofty	P	n/a	Cabinet	no	83
Granite IS	P	Section 47	SAPC	yes	27
Wilpena	G	exempt (R-59c)	Cabinet	yes	107
<b>TRANSMISSION</b>					
Cherry Gdns	G	Section 7	Cabinet	yes	14
Tallem Bend	G	Section 7	Cabinet	yes	11
SA/VIC connect.	G	Section 7	Cabinet	yes	30/33 <sup>6</sup>
Ardrossan Dalr.	G	Section 7	Cabinet	yes	26
<b>POWER</b>					
PASA pipeline	G	exempt (R-59d)	Cabinet	yes	11
Nth. Power St.	G	Section 7	Cabinet	yes	15
<b>TRANSPORT</b>					
SE Highway	G	Section 7	Cabinet	yes	38
<b>MINING</b>					
Kingston	P	n/a	Cabinet	n/a-	26
<b>URBAN</b>					
Thompsons Beach	P	Section 47	L.Council	yes	6
MFP	G	n/a	n/a	n/a	56
<b>WASTE</b>					
Waterloo Corner	P	Section 47	L.Council/PAT	yes	4
<b>WATER</b>					
Woolpunda	G	Section 7	Cabinet	yes	13
<b>DEFENCE</b>					
Pt Wakefield	G	Commonwealth	Commonwealth	yes	244 <sup>7</sup>

<sup>1</sup>Government (G) local government (LG) private (P)

<sup>2</sup>Sections under the Planning Act unless exempt by regulations

<sup>3</sup>South Australian Planning Commission (SAPC) Planning Appeal Tribunal (PAT)

<sup>4</sup>Public submissions called for on both EIS and the proponent's response

<sup>5</sup>Public submissions received for four EISs collectively published in one document

<sup>6</sup>Public submissions from SA and VIC

<sup>7</sup>244 people actually made 257 public submissions

National Park if it is carried out in accordance with an adopted management plan for the park. As noted in Chapter Three, this issue was strongly contested in the courts. The second project to be exempted was the PASA pipeline project. This was exempted under Regulation 59(d) which, as noted in Chapter Three, appears to be incorrect as the project was under land which is subject to coastal processes. The third project which did not have a decision made under the Planning Act was the Port Wakefield defence project which was approved under Commonwealth legislation.

Planning decisions have been made for 30 out of the 34 projects. These have mostly been made by Cabinet (13) and the Governor (11), whereas the South Australian Planning Commission has only made decisions on four projects, local councils on two projects and the Commonwealth on one. The low number of local council decisions on EIS projects is related to a change in the legislation in 1985, which removed their power to do so. The low number of SAPC decisions relates in part to the constraints of the Development Plan. Although the SAPC has made a limited number of decisions, it does provide advice to the Government on EIS projects under Section 7 of the Planning Act. Of the total 30 projects with planning decisions made, 23 have been approved and seven have been rejected.

Table 4.1 indicates a wide range in the numbers of public submissions for individual projects. These vary from four to 546 public submissions but excludes petitions related to the project and in one case excludes multiple submissions made by the same person.

#### TIMING OF THE EIS PROCESS

Although the timing of the EIS process has been looked at in a cursory fashion by the EIA Review Committee (1987) and the Bureau of Industry Economics (1990), there has been no complete analysis of the various timing elements in the EIS process. The EIA Review Committee study draws general conclusions on timing based on selected EIS projects both before and after the introduction of the Planning Act. The Bureau of Industry Economics data are based on information from the Assessment Branch in South Australia, but this report only gives broad time ranges as estimates of time taken for each element of the process. In order to gain an accurate picture it is necessary to examine the time taken for all elements of the 34 completed EISs. The stages in timing for the EIS process can be defined as follows:

- 1) elapsed time from Minister's requirement for an EIS up to proponent's production of a draft EIS
- 2) public exhibition period
- 3) elapsed time from the end of the public exhibition period up to the proponent's production of a response to submissions
- 4) elapsed time from the production of a response to the completion of an Assessment Report
- 5) elapsed time from the completion of the Assessment Report to the Minister's official recognition of EIS

In addition there is the time taken for a planning approval subsequent to completion of the EIS process.

The following analysis is based on the above time elements for all of the 34 EIS projects, although the four Glenelg marina/development projects have identical time frames. In a legal sense these four EISs are treated quite separately but it could be argued either that the timing and public submissions should be 25% of the totals, or that the complexity of treating four projects simultaneously extends the time framework and makes them difficult to separate. Similarly, many of the 54 submissions refer to more than one of the four projects. For the purposes of this thesis the four projects have been treated separately.

The first stage is the length of time taken by the proponent from the date of notification that an EIS is required until a draft EIS is actually produced. The EIA review committee (1987 p16), which did include reference to some pre-1982 EISs, states that the preparation of an EIS takes 4-25 months (17.3-108.3 weeks). This is well within the range of data presented in this thesis and does not reflect the true range of time taken for EIS preparation times. In fact, the mean time for the 34 projects is 56.6 weeks with a standard deviation of 45.5 weeks. Figure 4.1 illustrates the variability in this timing from a maximum of 202.6 weeks down to a low of 1.9 weeks. Figure 4.1 shows the projects with the earliest EIS requirements on the left across to those with the most recent EIS requirements on the right. Given the (non-linear) time progression of EIS requirements from 1982-1993 it is apparent that there is a general trend toward less time being taken to prepare an EIS in later years. The second stage is the public exhibition period which as expected shows very little variability. Up until 1985 there was a minimum eight week public exhibition period after which it was reduced to six weeks minimum. Consequently there is a mean exhibition time of 7.5 weeks and a standard deviation of 1.0 week.

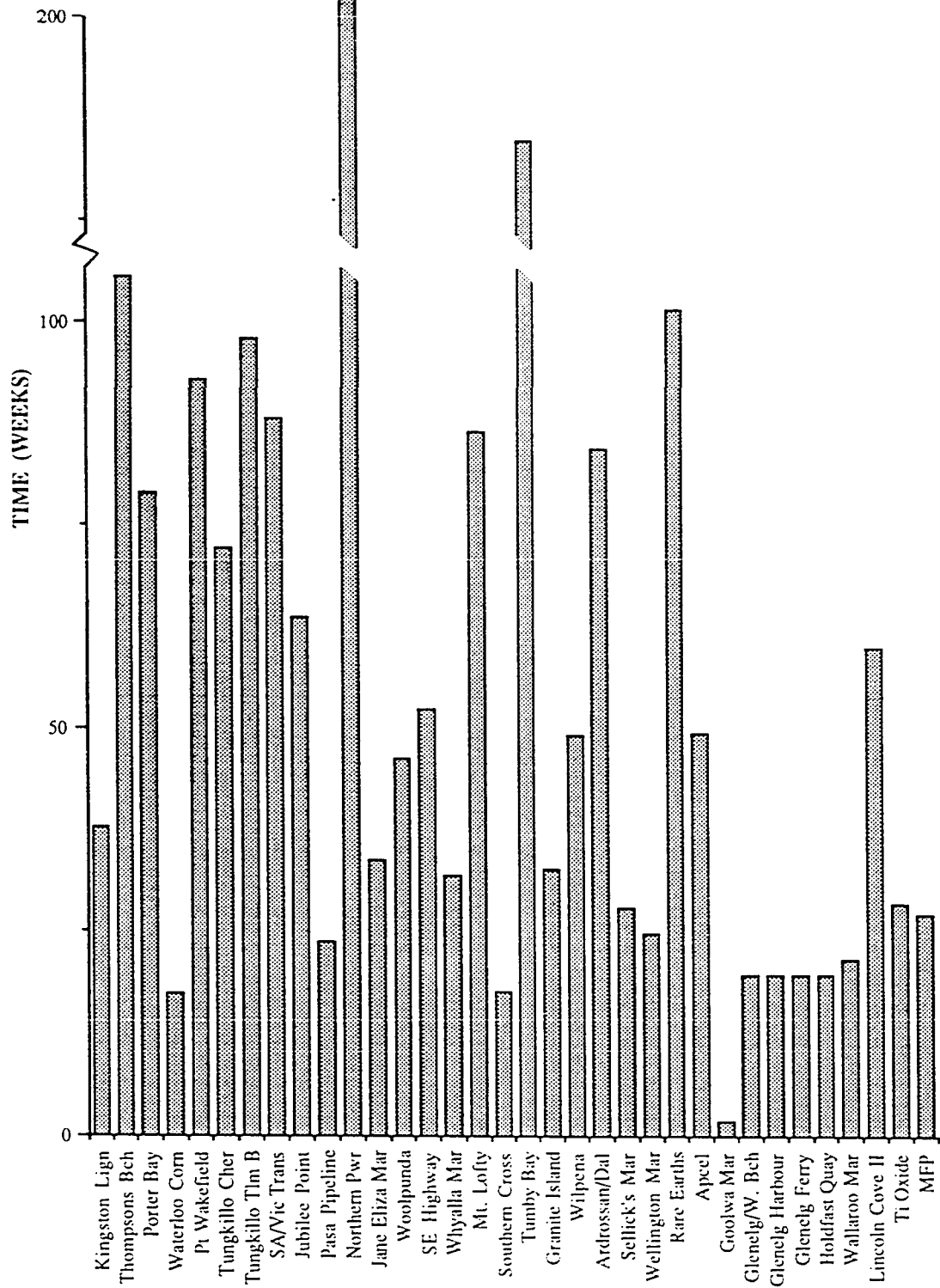


Figure 4.1: Time taken from EIS requirement to release of draft EIS

In some cases exhibition times have been extended to allow extra time because of public holiday periods such as Easter and Christmas, or they have been extended because of the complex nature of a project. The maximum exhibition period was 10.1 weeks but there are cases where calls for extended public comment on complex problems have been ignored, particularly for government initiated projects such as the Glenelg projects or the MFP.

The third stage is the time taken from the end of the public exhibition period up to the proponent's preparation of a response. The EIA review committee (1987 p16) suggests that the response preparation time varies from two to 17 months (8.7-73.7 weeks) and the Bureau of Industry Economics (1990, p45) suggests that this time is typically one to six months (4.3-26 weeks). In fact, the range is less than that suggested by the EIA review committee and greater than that suggested by the Bureau of Industry and Economics. The times taken are shown in Figure 4.2 which indicates less variability for the preparation of the response than for the preparation of the draft EIS. The response times range from a high of 47.9 weeks to a low of 4.4 weeks. The mean response time is 21.5 weeks with a standard deviation of 13.2 weeks. The lower variability is to be expected as most of the substantial research on environmental issues should have been conducted for the draft EIS. Where this is not the case it is reasonable to assume that there are problems with the project.

The fourth stage, unlike stages one and three, is dependent on the Government rather than the proponent for timing. The time taken for the preparation of Assessment Reports has been estimated by the EIA review committee (1987, p16) as *normally less than three months* (13 weeks), and by the Bureau of Industry Economics as *typically two to three months* (8.7-13 weeks). In fact, both of these significantly underestimate the time taken for preparation of assessment reports which varies from a high of 37.7 weeks down to a low of 1.6 weeks. The mean assessment time is 14 weeks with a standard deviation of 9.1 weeks. These data are illustrated in Figure 4.3 which shows a reduction in time for more recent Assessment Reports (shown on the right of the figure). However, the nature of the Assessment Reports has also changed in later years. The earlier reports tended to contain a review of environmental data contained in the draft EIS and Supplement, and where appropriate provide additional data. More recent Assessment Reports, focus on the issues relating to decision making and tend to provide little additional data. In some cases such as the Jubilee Point Assessment Report and the Mount Lofty assessment reports, additional data are contained in appendices.

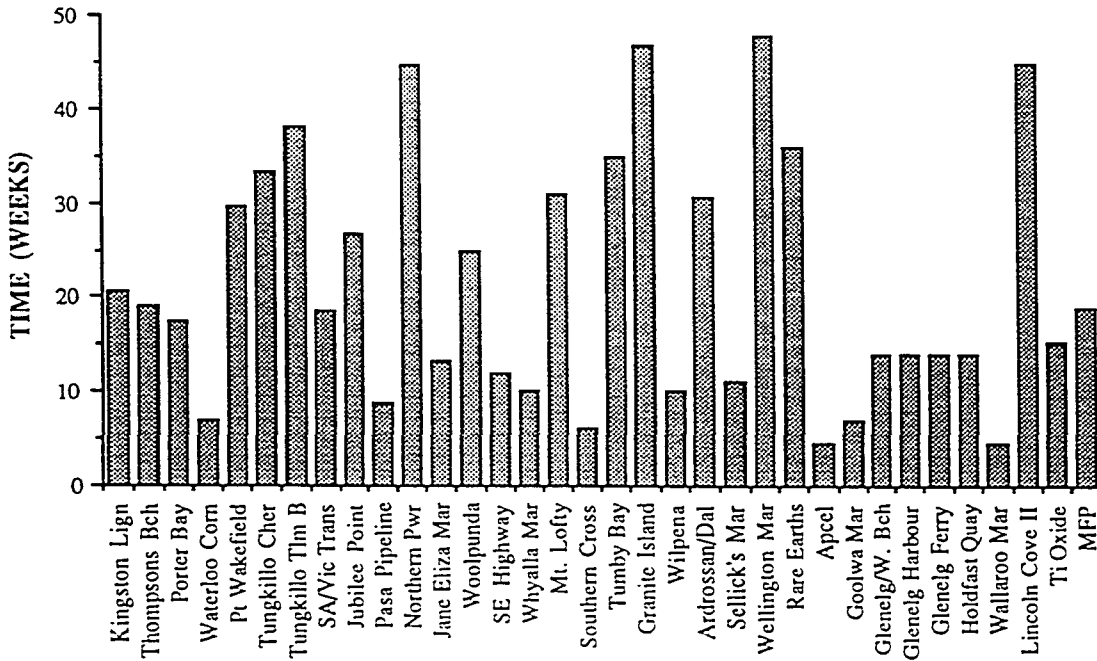


Figure 4.2: Time from end of exhibition to the release of Supplement

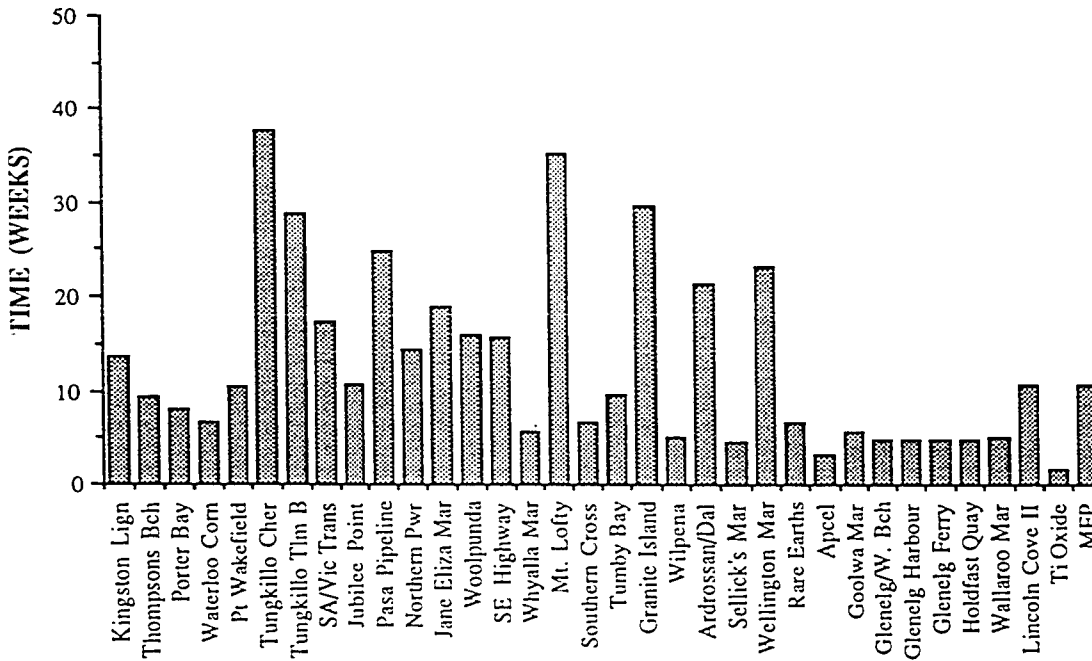


Figure 4.3: Time taken for preparation of the Assessment Report

The fifth stage is also dependent on the Government and/or the Minister for timing. Once the Assessment Report is essentially completed the official recognition should not take long unless there are difficult decisions or political imperatives. The times, shown in Figure 4.4, range from 24.7 weeks down to a low of 0.4 weeks which only represents administrative processing. The mean time between assessment completion and recognition is 3.1 weeks and the standard deviation 4.5 weeks. In a few cases recognition has been delayed such as the Kingston Lignite, Waterloo Corner and Jubilee Point projects. The Kingston project was involved, after the assessment stage, with further technological investigations and discussions on State energy options before the EIS was recognised. The Waterloo Corner EIS recognition was delayed because of internal government concerns with the project. However, the possibility of a legal challenge, based on the fact that the Minister 'must' recognise a satisfactory EIS, left the Minister with no option but to give it recognition. With the Jubilee Point project the State government faced the possibility of a legal challenge to the Assessment Report and decided to amend the report before it was published. Even when it was published the Government was fearful of a backlash from the Assessment Report conclusions and decided to have a separate inquiry

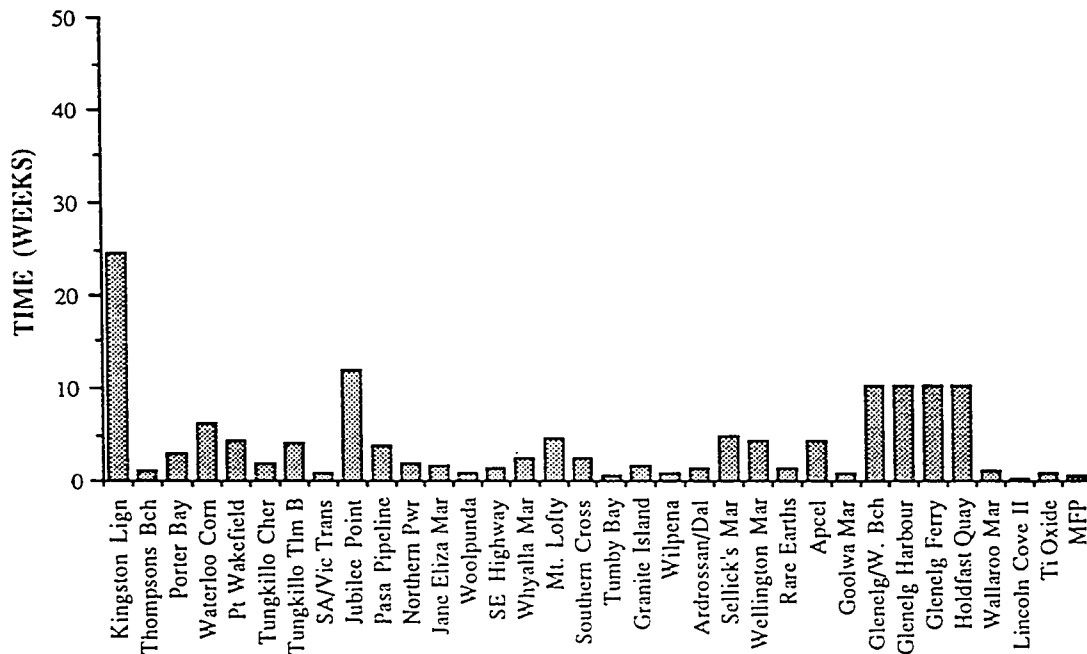


Figure 4.4: Time from completion of Assessment Report to recognition



It is interesting to compare the relative time taken during the EIS process by the proponent and Government respectively. If the public exhibition time is omitted from the calculations (since this has a statutory minimum time and shows minimal variation), this leaves four elements of the process. The preparation of the draft EIS and the Supplement are the responsibility of the proponent. The mean time for the sum of these elements is 78 weeks with a standard deviation of 54 weeks. The total proponent time varies from a low of 8.9 weeks up to a high of 247.3 weeks. On the other hand, the preparation of the assessment and the granting of official recognition are the responsibility of the government. The mean time for the sum of these elements is 17 weeks with a standard deviation of 10.2 weeks. The total government time varies from a low of 2.5 weeks to a high of 39.7 weeks. These data are represented in Figure 4.5 which illustrates the relatively small component of government time in the whole process. This does not imply that government work is confined to this time but it indicates that the onus for speeding up the process falls largely on the proponent. A classic example is the Goolwa marina proposal on Hindmarsh Island which has the shortest proponent total time (8.9 weeks) of all the projects and a correspondingly shortest total EIS time.

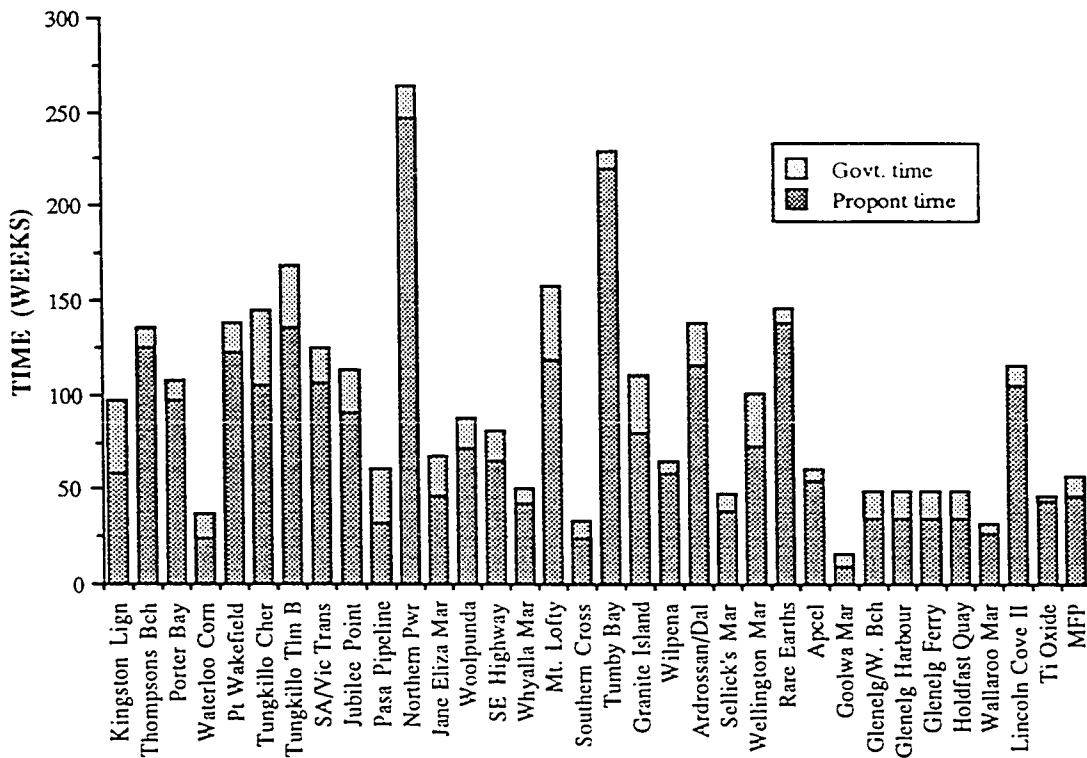


Figure 4.5: Proponent versus Government time in the EIS process

The total time from EIS requirement to recognition is similar to the time shown in Figure 4.6 but with the addition of the public exhibition time. The total EIS time is of significance to proponents as it is often blamed for delays in project development. The EIA review committee (1987, p16) suggests that the normal time from EIS requirement to recognition is 18-24 months (77.9-104 weeks). However, analysis of data in this thesis shows that the mean total time is 102.5 weeks with a standard deviation of 56.9. This mean figure is at the upper end of the range suggested as 'normal' by the EIA review committee. In fact the total times (Figure 4.6) range from a low of 21.5 weeks up to a high of 271.8 weeks.

The total times shown in Figure 4.6 do not include decision making times. These are seen as separate to the EIS process itself. As shown in Figure 4.5 the government time is small compared to the proponent time in the EIS process. If the total EIS time (ie from requirement to recognition) is used as a yardstick, it is apparent that the proponent time on average accounts for just under three quarters of the total time (mean 71.36%, standard

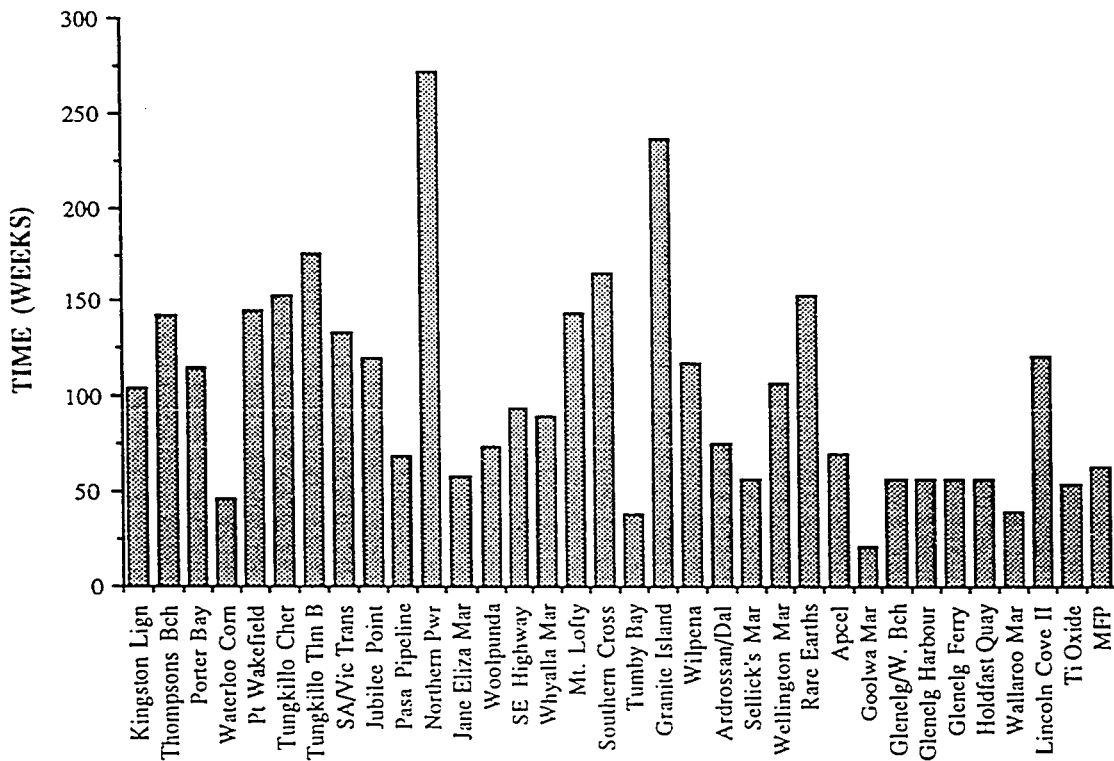


Figure 4.6: Total EIS processing time from requirement to recognition

deviation 12.51%). The percentage of proponent time ranges from a low of 41.4% up to a high of 92.7% and as might be expected the lower percentage of proponent time is usually related to shorter total times.

## PUBLIC SUBMISSIONS AND PUBLIC INVOLVEMENT

Numbers of public submissions on projects are not necessarily a good indicator of the success or failure of a project. The seven rejected EIS projects, for example, do not have the seven highest numbers of public submissions. However, these seven projects fall into two distinct groups. First there are those rejected on their own merits/disadvantages (Jubilee Point, Sellicks and Mt Lofty) and second there are those projects where the decisions were constrained.

The first group of rejected projects are among the five EIS projects with the highest number of public submissions (Sellicks 546, Pt Wakefield 244, Jubilee Point 109/103, Wilpena 107 and Mt Lofty 83). The Pt Wakefield project, although not rejected was significantly modified. This was a federal defence project which had potential for major social impact on coastal residents in the vicinity. Consequently, upon State government advice the extension of the Port Wakefield Proof Range was significantly scaled down to reduce the social impact. The Wilpena Tourist Resort proposal, although not rejected was unlike all the other EIS projects in that it had a decision made under the National Parks and Wildlife Act rather than the Planning Act. This process in itself was subject to legal challenge, although the challenge was overturned and the project subsequently approved.

The second group of projects had lower numbers of public submissions (Glenelg marina projects 54 and Wellington marina 19). The decision on the four Glenelg projects was constrained in that it was not possible to approve all four projects so that by default three of them would not be selected even if they were good projects with minimal environmental impacts. In addition, the lower public response to the Glenelg projects was in part related to the fact that there were four projects to respond to in one document and the fact that there was significant public discussion before the EIS was released. On the other hand, the decision by the SAPC on the Wellington marina proposal was constrained by the Development Plan. Similar situations with other proposals were avoided by using the Governor rather than the SAPC as the decision making body. However, given the local opposition there was no incentive for the project to be considered on its own merits.

The numbers of public submissions are also depicted graphically in Figure 4.7 showing that over half of the projects (55.9%) attracted under 30 submissions. In turn, just under half of these (23.53% of the total) have less than 10 submissions. Although this says nothing about the quality of these submissions or the relevance of issues raised, it is one indication of the level of public interest in the majority of EIS projects. This contrasts with the smaller group of projects (32.3%) which attracted between 30-100 submissions and the remaining 11.8% of projects which attracted over 100 submissions. Of these the Sellicks marina project attracted a record number of 546 public submissions. The mean figure for public submissions is 53.82 with a standard deviation of 98.46.

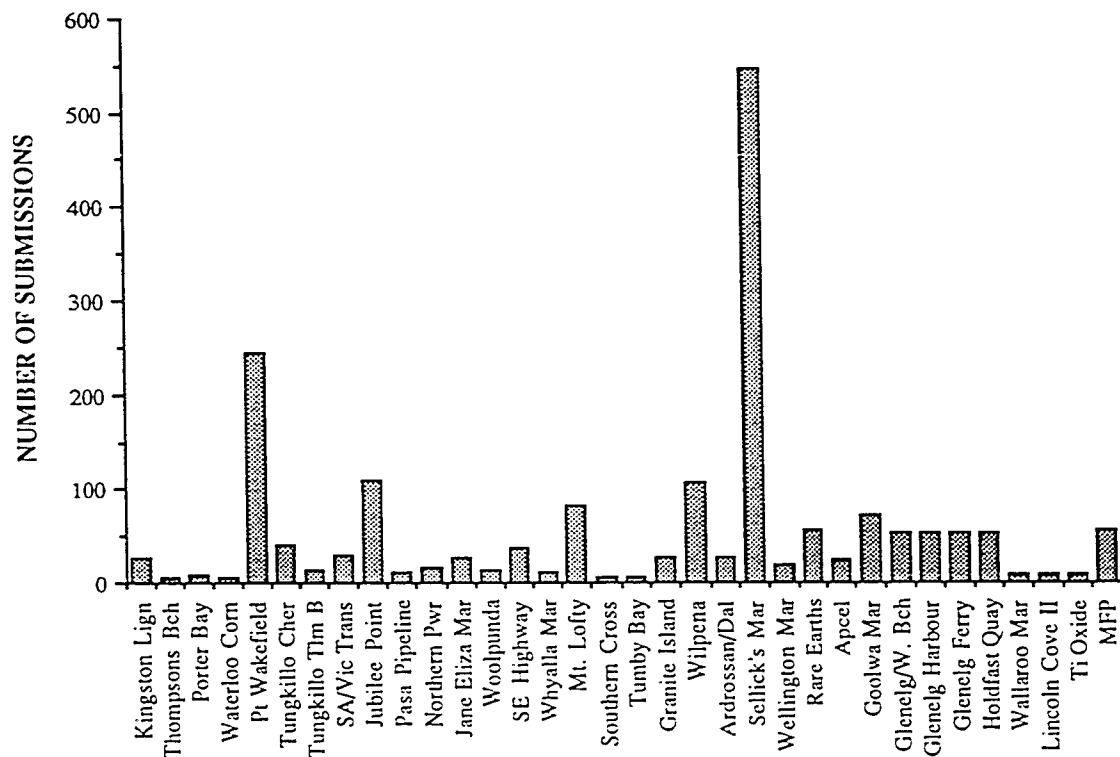


Figure 4.7: Numbers of public submissions to EISs

Many EIS projects have attracted local rather than a State wide interest. A number of these, such as the four transmission line projects, had a potential impact on specific communities which in some cases were instrumental in rerouting the transmission line. Others such as the PASA pipeline project had to weigh up environmental issues against cost and damage risk factors.

Public submissions are not the only indicator of public involvement, but are the only official manner in which public comments are incorporated into the EIS process. A number of proponents attempt to involve the public by conducting information meetings or providing opportunity for feedback. For example the Kingston Lignite project consultants conducted a number of meetings with affected farmers and created a more informed public in the area likely to be affected by the project. Similarly the South East Highway project consultants conducted questionnaires, provided phone contact for information and set up on site information vans. The Willunga Council conducted a number of meetings for the Sellicks Beach Marina project.

These separate public information avenues and feedback sessions vary in their aims and the amount of public information provided. For these reasons the Assessment Branch of the former Department of Environment and Planning has now adopted a practice of running a public meeting on the EIS about half-way through the public exhibition period. The effect of this is difficult to assess but it possibly has the effect of reducing the uncertainties about a project and consequently reducing the number of public submissions for a project. Examples such as the Tumbay Bay or Wallaroo EISs had only four and seven public submissions respectively but public meetings for these projects had attendances of 70 to 80 people.

#### GOVERNMENT LIAISON IN EIS PREPARATION

Once an EIS requirement has been given, the proponent is asked (not required) to consult with the Assessment Branch within the Department of Environment and Planning (now within the Office of Planning and Urban Development) on the preparation of guidelines. Guidelines are project specific as there is no uniform set of guidelines. Although the guidelines have no status in the legislation, they are useful as a scoping exercise for focussing on project specific issues. There is no set policy on guideline distribution, although comment is often sought from conservation bodies and other relevant organisations. Guideline documents produced in the late 1980s and early 1990s tend to be less detailed than those of the early 1980s and exclude much of the background environmental data. This is probably a reflection of management directives, in an attempt to reduce the size of EISs to make them more palatable for bureaucrats and politicians.

An important element in government liaison is the manner in which the project is first referred through government channels. Once an EIS is required there is also a variation in

levels of communication dependent upon the management of the Assessment team. Some projects such as Jubilee Point had a steering committee based in the Department of Premier and Cabinet. This committee was apparently of the opinion that the EIS process was just one of many hurdles to be overcome. This attitude meant that there was confusion between the proponent and Government departments because of uncertainty as to whether the steering committee or the Assessment Branch was the relevant point of contact.

Another factor in the smooth operation of the EIS process depends on the proponent and consultant. Some proponents are keen to co-operate and produce an EIS document which addresses all the environmental issues and, in so doing, is beneficial for their project. Other proponents take a confrontational stance and are not willing to pay consultants to do the necessary investigation. Although the element of government liaison with a proponent is important it is so dependent on personalities, on both sides, that it is difficult to assess its importance apart from extreme cases.

#### PROPONENTS AND THEIR EIS CONSULTANTS

As shown in Table 4.1 most (19) of the 34 completed EISs are for private development proposals, with 12 being State government proposals and the remaining three local government. The proponent's environmental awareness, expertise and capacity to conduct or have environmental studies conducted are all important elements in the process. The fact that many proposals are State government does not necessarily mean that the EIS process will be smoother than for private developments. The smooth running of the EIS process depends on cooperation between the proponent, their consultants (if any) and the government, in particular the Assessment Branch.

EIS consultants are an important factor in the EIS process. It is evident from Table 4.2 that two EIS consultants dominate the South Australian market. Kinhill Engineers (formerly Kinhill Stearns) is an international company with engineering and environmental planning expertise, which has completed nine out of the 34 EISs. Whilst the environmental planning side of the firm completed the EISs, the engineering side of the firm was also involved in the construction contracts that flowed from a number of these projects. PPK consultants is a South Australian based company with engineering and environmental planning expertise, which has been involved in seven of the EISs (two on a joint basis). There are then a number of other consultants and/or proponents which

**TABLE 4.2 CONSULTANTS FOR COMPLETED EISs IN SOUTH AUSTRALIA**

	(proponent) <sup>1</sup>	(EIS consultant)	(Supplement consultant)
<b>MARINAS</b>			
Porter Bay	G	SA Department of Tourism	Paul Manning and Associates
Whyalla	LG	Kinhill Stearns	Kinhill Stearns
Jubilee Point	P	Kinhill Stearns	Kinhill Stearns
Sellicks	LG	Bone and Tonkin	Bone and Tonkin
Glenselg Harbour	P	PPK Consultants	PPK Consultants
Glenselg/West Beach	P	PPK Consultants	PPK Consultants
Glenselg Ferry	P	PPK Consultants	PPK Consultants
Holdfast Quays	P	PPK Consultants	PPK Consultants
Tumby Bay	LG	Lange Dames & Campbell	DC Tumby Bay
Wallaroo	P	Eco Management Services	Eco Management Services
Lincoln Cove II	P	KMH Neighbour Lapsys	KMH Neighbour Lapsys
Jane Eliza	P	Bone and Tonkin	Bone and Tonkin
Wellington	P	Wellington Cove	Wellington Cove
Hindmarsh Is.	P	PPK Consultants	PPK Consultants
<b>INDUSTRIAL</b>			
Southern Cross	P	Maunsell & Pts & AGC	Maunsell & Pts & AGC
Apeel	P	Kinhill Engineers	Kinhill Engineers
Rare Earths	P	Kinhill Engineers	Kinhill Engineers
Tioxide	P	Dames and Moore	Dames and Moore
<b>TOURIST</b>			
Mt Lofty	P	Touche Ross	Touche Ross
Granite IS	P	Granite Island Syndicate	Granite Island Syndicate
Wilpena	G	Michael Williams and Ass.	Michael Williams and Ass.
<b>TRANSMISSION</b>			
Cherry Gdns	G	SEA	SEA
Tailem Bend	G	Kinhill Engineers	Kinhill Engineers
SA/VIC connect.	G	ETSA and SEV	ETSA and SEV
Ardrossan Dalr.	G	Woodburn Fitz. & Geot.	Woodburn Fitz. & Geotech.
<b>POWER</b>			
PASA pipeline	G	Kinhill Stearns	Kinhill Stearns
Nth. Power St.	G	Kinhill Stearns	Kinhill Stearns
<b>TRANSPORT</b>			
SE Highway	G	Maunsell & Pts.	Maunsell & Pts.
<b>MINING</b>			
Kingston	P	Kinhill Stearns	Kinhill Stearns
<b>URBAN</b>			
Thompson Beach	P	Wallman Planning Cons.	Wallman Planning Cons.
MFP	G	PPK Consultants & CSIRO	PPK Consultants & CSIRO
<b>WASTE</b>			
Waterloo Corner	P	Wallman Planning Cons.	Wallman Planning Cons.
<b>WATER</b>			
Woolpunda	G	Kinhill Engineers	Kinhill Engineers
<b>DEFENCE</b>			
Pt Wakefield	G	SEA and PPK Consultants	SEA and PPK Consultants

<sup>1</sup>Government (G) local government (LG) private (P)

have completed the remaining 19 EISs. In some cases EISs have been written by proponents who lack the environmental expertise, but attempt to save the expense of professional EIS consultants.

The large engineering and environmental planning firms place emphasis on the presentation of the final EIS product which could affect the credibility of their firm. However, the presentation does not necessarily equate with the quality of the EIS, as noted in the criticisms of the Jubilee Point EIS.

The first attempt by a proponent (the SA Department of Tourism) to complete their own EIS proved unsuccessful because of a substandard document. In this case an outside consultant (Paul Manning and Associates - later Eco Management Services) was employed to produce the Supplement and also provide some objectivity, since the Government was a joint proponent. Another example is the Granite Island EIS where a team was put together by the proponents and the EIS was criticised for its shallow treatment of many issues.

There are also examples of potential construction projects where the EIS consultant has the advantage of having conducted the preliminary feasibility studies, such as occurred at Tumby Bay and Whyalla. The Tumby Bay EIS was an unwieldy document prepared by an engineering firm which lacked EIS expertise (Lange, Dames and Campbell). Consequently the EIS lacked focus on the major issues and was expensive for the local council, despite the fact that its consultants had already produced detailed feasibility studies. Subsequently the local council prepared its own Supplement without the consultants. A similar situation occurred at Whyalla, where the consultant (Kinhill Stearns) had conducted detailed feasibility studies for the project and yet produced an expensive EIS for the local council. In this case the same consultant completed the Supplement and also the construction work, once the project was approved.

In general, the EIS process runs smoothly where the proponent is prepared to address environmental issues and fund their investigation by employing appropriately qualified consultants. The process is then greatly assisted by cooperation between proponent, consultants and Assessment Branch officers. This level of cooperation and appropriately qualified consultants occurred for the Goolwa marina proposal and at least partly explains why it has the shortest total EIS processing time.



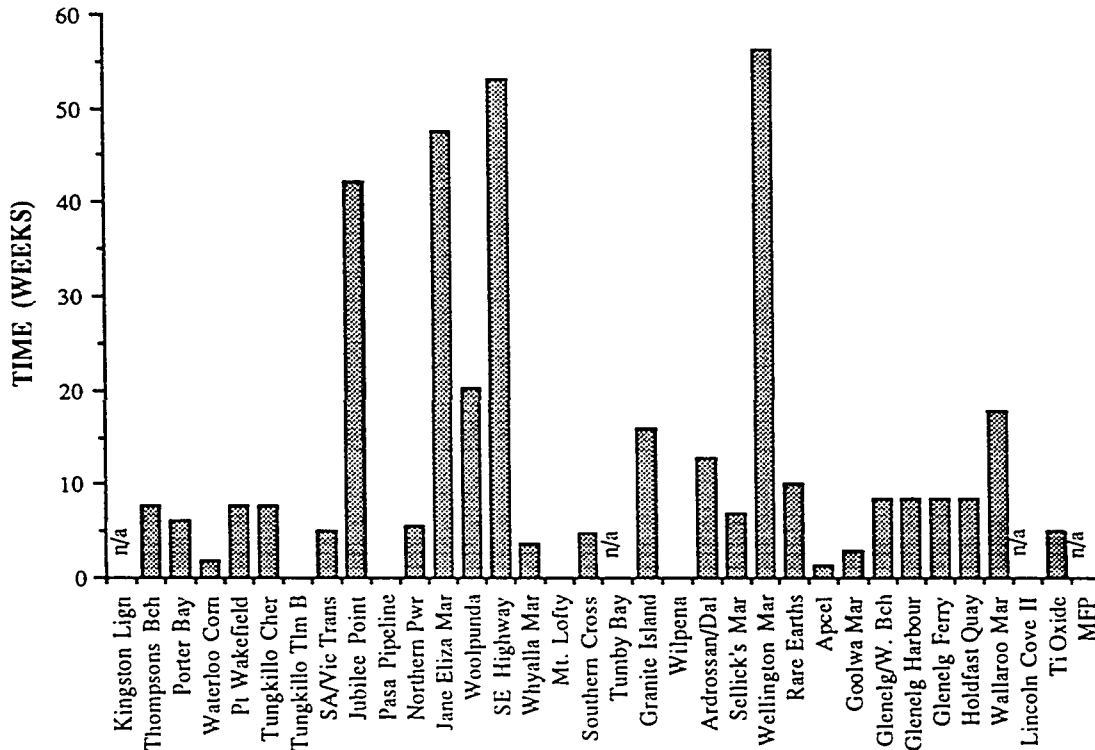
## DECISION MAKING AND THE ROLE OF THE SAPC

It is clear from Table 4.1 that EIS projects are considered too important for decision makers to be too far removed from government influence. The power for local councils to make such decisions was removed in 1985 after decisions were made contrary to government advice. Over three quarters (76.7%) of the 30 EIS projects which have had decisions made, were made by the Cabinet and/or the Governor.

The independent SAPC has had a limited role in EIS project decision making in South Australia. Although the SAPC is the statutory planning authority it is constrained by having to have regard to the principles in the Development Plan. This Plan is geared toward development control and is unlikely to envisage guidelines for many of the innovative major projects which become subject to EIS requirements. In order to avoid such problems some of the four projects which the SAPC made a decision on, had SDPs prepared to amend the Development Plan. However, it is interesting to note that the Wellington marina project was rejected by the SAPC on the basis that it did not conform to the Development Plan. In this case the Government was not prepared to use a Governor's decision through Section 50/51 to avoid the constraints on the SAPC because of the Development Plan.

There is considerable variation in the decision making process for EIS projects, as noted by Harvey and Swift (1990a) for marina projects. EIS proposals have been processed through Section 7 of the Planning Act and effective decisions made by Cabinet, although technically the decision rests with the relevant Crown authority. Sections 47, 51 and 63 of the Planning Act have all been used to make decisions on projects either by the SAPC (and local council prior to 1985) or the Governor. Two projects were exempted from Planning Act decisions. The Wilpena project exemption was challenged unsuccessfully in court and the PASA project exemption appears questionable, although never challenged. Other decisions have been made by Cabinet with the exception of the Commonwealth decision for the defence facility.

Decisions on EIS projects can only be made once the EIS has been completed. For this reason the decision making element was not included in the earlier discussion on timing. However, it is useful to examine the time taken to make decisions on EIS projects. Figure 4.8 indicates the time taken for a decision on a project once the EIS has



**Figure 4.8: Decision times on EIS projects**

been officially recognised. Four projects (Kingston Lignite, Tumby Bay, Lincoln Cove II and the MFP) are not included since planning decisions have not yet been made for these projects. The mean decision time for the remaining 30 EIS projects is 12.6 weeks with a standard deviation of 15.8 weeks. The decision times range from zero for four projects which had decisions made at the same time as official recognition was given, up to 56.4 weeks.

Total elapsed times from EIS requirement to project decision are produced by adding the decision times to the total EIS times for the 30 projects. These data, depicted in Figure 4.9, give a mean total elapsed time of 111.2 weeks with a standard deviation of 56.6 weeks. Thus an EIS project can expect to have a decision made roughly two years after the EIS requirement is made. The figures range from a low of 24.5 weeks up to a high of 277.5 weeks.

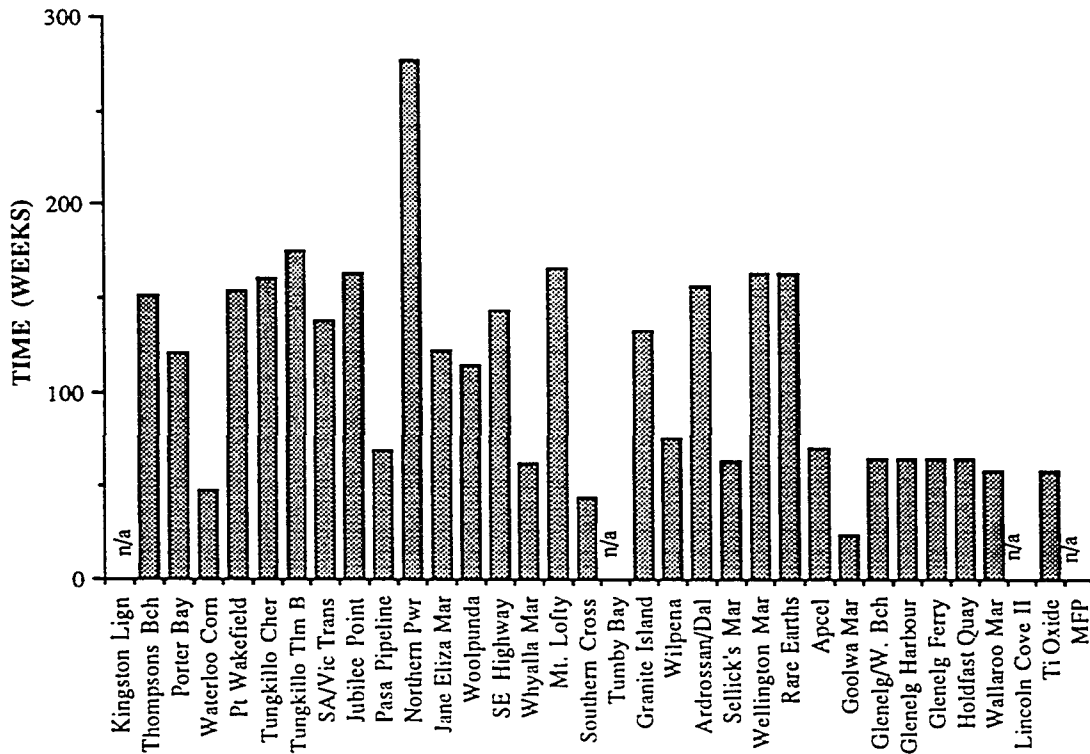


Figure 4.9: Total time from EIS required to planning decision

#### POLITICAL INFLUENCES

It is interesting to note that Damania (1992) in writing about EISs in a political context, says very little about political influences apart from a government commitment to large scale projects *despite the potential environmental damage that may result* (Damania 1992, p166). Damania levels more criticism about the EIS process at government officials rather than any political interference.

The fact that most of the decision making on EIS projects rests with the politicians either at Cabinet level or through the Governor; indicates a strong political involvement with EIS projects. However, the political influence and the discretionary criteria for requiring an EIS act against the EIS being used to scrutinise government policies or projects. As shown in Table 3.1 there are a number of EISs which were required for coal mining proposals and on coal fired power stations. Only one of these was ever completed and subsequently the South Australian government decided against pursuing the coal fired energy option. However, there is no provision in the legislation to call for a EIS to investigate the potential "economic, social and environmental" impacts of pursuing a coal

fired energy policy in South Australia. The inclusion of powers to call for EISs on policy matters would overcome this problem.

The 60 projects for which EISs have been required give some idea of the type of projects which have attracted an EIS. However, it gives no indication of major projects which did not attract an EIS. This is beyond the scope of this thesis, although the ASER project, the Tandanya tourist project and the Grand Prix have all been raised as projects which should have attracted an EIS. They also all happen to have had strong political involvement.

Similarly, there was a major political involvement with a number of the marina projects. The Kingston Park marina was rejected in a marginal electorate following local opposition but before a draft EIS was ever completed. The opposite happened when the Government was seen as anti-marina and anti-development. Both the Premier and the Minister for Environment engaged in pre-election banner waving to effectively give approval 'in-principle' to a marina project at Marino Rocks. The political encouragement was such that the EIS requirement was dropped until public pressure forced the Government to renew the requirement.

Another marina project at Sellicks Beach was rejected at a time when there was a swing to the 'Green' independents in Tasmania. A decision by the Environment Minister in his own electorate was avoided (intentionally or not) by a switching of portfolios before the decision was made. Labor party posters advocating protection of the environment by rejection of the project were probably printed in bulk before any decision was made public.

## THE EVOLVING ROLE OF THE EIS IN SOUTH AUSTRALIA

As noted in Chapter Two of this thesis, the provision for EIA within the South Australian Planning Act, 1982, created the mechanism by which the EIS has become an important decision making tool for major projects in South Australia. Two years after the Act was introduced an EIA review was set up. Two years later, or four years after the Act had been in operation an EIA review report was completed. A further seven years have now elapsed and no major changes have been made, although changes are proposed in the Development Bill (discussed in the next chapter). This thesis attempts to provide a unique overview of the role of the EIS in South Australia during the 11 year period from when the Planning Act was introduced.

Of the 34 completed EISs, it is interesting to note that the majority of these projects have been approved. This suggests that by the time an EIS has been completed most of the environmental problems have been resolved or are capable of being resolved. It also suggests that where this is not possible, the proponent recognises the difficulties and abandons the project before the EIS is ever completed. This was not the case for the three rejected EIS proposals which happen to be among the top five in terms of numbers of public submissions. Although each of the three rejected proposals has a complex history of project development, environmental assessment and negotiations, it is significant that the decision to reject the proposals was ultimately made at the political level.

Chapters Three and Four in this thesis have attempted to provide a unique overview of the EIS process in practice and discuss various elements such as the role of State and local government, proponent, consultant, the public, decision makers, political influence and also the timing for stages of the process. It is possible from this analysis to indicate aspects of the evolving role of the EIS in South Australia. Decision making on EIS projects, for example, has been removed from local councils and even the SAPC has had a limited role in decision making. There is an increasing tendency to use the Governor for non-appealable decision making on major projects. Administrative procedures in the late 1980s have provided public information on EIS projects that has probably reduced the formal public input through submissions. Generic EIS issues, such as those in the marina projects, have been addressed with a generic set of marina guidelines and a Government marina strategy because of a lack of policy direction in that area. However, other government policy matters such as energy options are not subject to EIA procedures and yet the lack of policy expresses itself through delays in the EIS process.

As noted in Chapter Two, there has been some criticism of the South Australian EIS process either by unsuccessful proponents (Kinnaird 1987, 1989), EIA consultants (Jenkins 1990), EIA practitioners (Fookes 1987a, 1987b) or political commentators (Damania 1992). However, further discussion of the role of the EIS would be left in a vacuum without reference to proposed changes to EIA in South Australia, current moves on national EIA strategies and the context of other legislative changes and the formation of various environmental protection authorities. The next chapter attempts to provide a perspective of recent and proposed legislative and administrative changes which will affect the role of EIA in South Australia. This will then provide the context for the final chapter of the thesis examining the future role of the EIS in the South Australian planning system.

## CHAPTER FIVE

### PROPOSED CHANGES TO EIA AND LINKAGES WITH RECENT STATE AND COMMONWEALTH ENVIRONMENTAL INITIATIVES

Since EIA was incorporated into the Planning Act of 1982 there has been extensive debate about the EIA process and committees have been set up to investigate EIA, not only in South Australia but also at a national level. In South Australia this review process, apart from minor legislative amendments, has been going on since 1984 and yet legislative changes to EIA will not take effect until late in 1993. At the national level there have been more significant amendments to the EIA legislation during this time but it is only recently (1991) that there has been an attempt to formulate a national approach to EIA with the aim of producing an agreed strategy for all States and Territories and the Commonwealth. At the same time the Commonwealth government has produced a strategy for ecologically sustainable development, there has been an intergovernmental agreement on the environment, and there has been a formation of environmental protection agencies at both the Commonwealth and the State levels. All of these are likely to have some effect on the future operation of EIA.

#### SOUTH AUSTRALIAN EIA REVIEW COMMITTEE 1984

In September 1984 a committee was set up by the South Australian Minister of Environment and Planning to review the environmental impact assessment process in South Australia.

The terms of reference for this review committee were as follows:

*To review the existing environmental impact assessment process and recommend any changes deemed appropriate in order to facilitate the most effective and efficient assessment of the environmental impact of development.*

- 1) *Undertake the review generally within the framework of existing legislative change where it is considered desirable.*
- 2) *Clarify the objectives of the EIA process and define the terms used.*

- 3) *Consider the compatibility of EIA procedures as proposed for South Australia, with:*
  - (i) *National Conservation Strategy Recommendations and*
  - (ii) *Cost-Benefit Analysis*
- 4) *Consider the content of the officially recognised EIS.*
- 5) *Consider the nature of the Assessment Report.*
- 6) *Consider the responsibility for the preparation of an EIS.*
- 7) *Clarify the responsibility for, and payment of costs associated with, preparation and publication of EIS documentation and monitoring.*
- 8) *Consider the nature and extent of public involvement.*
- 9) *Consider how to educate the public about the EIA process.*
- 10) *Consider the means whereby the Minister is advised on the need for an EIS and official recognition of same.*
- 11) *Consider the compatibility of EIA procedures as proposed for South Australia with the approval process.*
- 12) *Canvass community opinion on the effectiveness of the present EIA system in South Australia.*

The report took two years to complete and another six months before it was released in February 1987. From the consultation process the committee identified two major concerns:

- the need for an effective level of public involvement in the EIA process, and
- an improved level of certainty for the developer throughout the process

The report which contained a total of 86 recommendations, suggested that there should be legislative changes in order to implement some of the recommendations. The main recommendations contained in the report are:

- extension of the application of EIA so that it can be applied to Government policies and programmes
- consistency in the application of EIA to public and private proposals
- introduction of a PER to address EIA of intermediate level proposals
- establishment of a new EIS process to be applied to the most significant projects and amendment to the EIS process to include:

- a public hearing
  - assessment by a specially appointed Environmental Assessment and Review Committee
  - a decision by Cabinet with no right of appeal
- provision for on-going monitoring, public reporting of results and interim cease-operating orders.

Notwithstanding, an extensive public and Government agency consultation process the recommendations of the report were not implemented and the Government was criticised for its delay over EIA reform. However, in an attempt to avoid further criticism, the Government initiated the preparation of a White Paper on EIA which was originally intended to address many of the recommendations made in the 1987 EIA report.

#### SOUTH AUSTRALIAN WHITE PAPER ON EIA 1989

In 1989 a White Paper was released as a 'Planning Act Amendment Act 1989' on 'Environmental Assessment Amendments - Major Projects'. The White Paper was released on 10 July 1989 for public comment but did not include all the EIA changes proposed in the 1987 report.

The main changes proposed in this White Paper are to provide three levels of assessment to replace the current two levels. The general assessment of minor proposals remains unchanged but a major proposed change is to introduce an intermediate level PER for development proposals that *would have a limited number of specific issues and not require the more comprehensive evaluation of an EIS*. This was also recommended in the EIA report and as noted in Chapter One of this thesis, the PER was introduced into federal legislation in 1987.

The PER was to have a minimum four week public display period (compared with six weeks for an EIS). The SAPC was to be the planning authority for all PER projects but there was to be no right of appeal. In addition the SAPC was to be given the power to make decisions which were at variance with the Development Plan (it is currently constrained from doing so).



The White Paper also proposed some amendments to the EIS process which was to *be reserved for the most substantial and potentially environmentally significant proposals*. It was proposed that a public hearing conducted by a person or appointed committee should be held in conjunction with each EIS. The six week minimum public display period was to remain the same. All decisions on EIS projects were to be made by the Governor with no right of appeal.

A key change proposed was that the Minister had to appoint a person or committee not only to conduct a public hearing but also to prepare an Assessment Report on an EIS, thus giving it the semblance of an independent report. In the case of the PER it was proposed that the Assessment Report would be prepared by the Director-General of DEP. In both cases the Assessment Report was to be given a status which it does not currently have, but actually reflects current practice. The proposal for the decision making authority to have regard to the Assessment Report would avoid the current need for the Minister to 'officially recognise' an EIS before any decision is made and to give effect to the assessment by making amendments to the proponent's draft EIS.

Other key changes proposed were the opportunity for the decision making authority to give an early refusal at any stage in the process; a more efficient mechanism for amending the Development Plan; and, the introduction of monitoring requirements (currently there is no provision for monitoring).

The White Paper was eventually shelved because of a major planning review initiated by the South Australian Premier in 1990. The Planning Review completed its final report in 1992 and released a 'Planning Strategy for South Australia' and a 'Development Bill' which is intended to replace and streamline the Planning Act.

#### SOUTH AUSTRALIAN DEVELOPMENT BILL 1992 AND IMPLICATIONS FOR EIA

The Development Bill which was first released in July 1992 for public comment, contains reference to EIA in its Division 3 on Major Projects (sections 34-36). This Division appears to be less radical in terms of changes than either the White Paper of 1989 or the EIA report of 1987.

Section 34 of the Bill is similar to Section 49 of the Planning Act except that it refers to the need for a project to be consistent with the Planning Strategy (also released for public

comment in July 1992), and requires that an EIS is referred to the new Environment Protection Authority (EPA) and any prescribed authority or body. Section 34 also refers to an Environmental Assessment Report (EAR) which must be prepared by the Minister and made publicly available.

Under Section 36 (essentially replacing Section 50 of the Planning Act) the Governor becomes the planning authority for all EIS projects and in making a decision must have regard to the relevant Development Plan and the regulations, the Planning Strategy and the EAR. The Governor is given the power to delegate this authority to the State Authority (sub-section 12) but there is no right of appeal against the Governor's decision.

Section 35 provides a mechanism for updating an EIS in response to new data, technological change or monitoring results. If there are any major changes it also provides for public exhibition of any amendments.

Division 4 of the Development Bill refers to Crown development and attempts to bind the Crown to similar development criteria as applied to private developers. This division provides for advice from councils and the State Authority but the decision would rest with the Minister. This is slightly different to the Planning Act where the decision rests with the relevant authority. A report must be laid before both houses of parliament and there is no right of appeal. Part 6 of the Development Bill refers to mining developments and is a direct copy of the provisions of Sections 59 and 60 of the Planning Act which makes provision for the Minister of Mines to invoke the EIS procedures contained within the Bill.

Thus the major implications of the Development Bill for ELA are that the decision on all EIS projects are to be made by the Governor with no appeal rights, decisions on Crown developments are to be made by the Minister, there is cross referencing and referral to the EPA, and an EAR becomes part of the required documentation and has to be considered in the decision making.

It is also relevant to note that a major reshuffle of ministerial responsibilities and portfolios occurred with the new Arnold ministry in 1992. Of direct relevance here is the splitting of the environment and planning functions so that the Office of Planning and Urban Development will have functional responsibility for the Development (Act) once it is operational, including the EIA process. However, the new Department of Environment

and Land Management, including the new Environment Protection Authority will have an advisory role.

Following public comment, a revised draft of the Development Bill was tabled in Parliament on 26 November 1992. Division 2 of the revised Bill, dealing with major projects, refers to EIA through Sections 48-50. Section 48 of the revised Bill replaces Section 34 of the earlier version and essentially mirrors Section 49 of the existing Planning Act. It also replaces Section 26b of City of Adelaide Development Control Act. There is no longer a requirement to refer an EIS to the EPA but there is a more general requirement to refer the EIS to any prescribed authority or body and/or other authorities or bodies that the Minister thinks fit. Section 48 also provides a definition of an EIS as a statement of:

- (a) *the expected social, economic and environmental effects of the development or project;*
- (b) *the extent to which the expected effects of the development or project are consistent with the provisions of-*
  - (i) *any relevant Development Plan*
  - (ii) *the Planning Strategy; and*
  - (iii) *any matters prescribed by regulations;*
- (c) *the conditions (if any) that should be observed in order to avoid or satisfactorily manage and control any potentially adverse effects of the development or project on the environment;*
- (d) *any other particulars in relation to the development or project required-*
  - (i) *by regulations; or*
  - (ii) *by the Minister.*

Section 49 of the revised Bill (which replaces the former Section 35) allows for amendment of an EIS to correct errors, incorporate new technological data or to provide for changes to the proposal. This Section also allows for the Assessment Report to be amended.

Section 50 of the revised Bill replaces Section 36 in the earlier version and essentially replaces Section 50 of the Planning Act where the Governor becomes the planning authority for all EIS projects and in making a decision must have regard to the relevant Development Plan and the regulations, the Planning Strategy and the EAR. An important provision in Section 50 is sub-Section 6 which provides for an early 'no' decision without having to go through the EIS process.

If Section 50 is used in relation to a previous application under Division 1, then the previous application automatically lapses. This solves the previous problem with the Planning Act where an EIS merely provided additional information for such an application and more or less 'stopped the clock' until the EIS had been completed. This meant that it was not possible to reject a proposal prior to official recognition of the EIS. Section 50 retains the option for the Governor to delegate the decision making to the State Authority.

Division 3 of the revised Bill refers to Crown development and replaces Division 4 of the earlier version. Notwithstanding public criticism that the Crown should be subject to the same approval processes as private applications, this Division has had very few changes. Crown development decisions still rest with the Minister but advice is considered from the relevant Council and in the event of a major disagreement a report has to be laid before both Houses of Parliament.

Part 9 of the revised Bill refers to special provisions relating to mining and replaces Part 6 of the earlier version. Sections 75 and 76 of the Bill mirror Sections 59 and 60 of the Planning Act which make provision for the Minister of Mines to invoke the EIS procedures contained within the Bill.

The earlier version of the Development Bill attracted some 300 submissions of which nearly 80 commented on the draft Bill. In relation to EIA a major point raised was to delineate clearly expressed criteria. In response this has been ignored in favour of greater Ministerial flexibility. Similarly comments on Crown development having the same accountability as private developments have been ignored because responsibilities are wider than a single Council. In addition public comments requesting increased public appeal rights have been ignored on the grounds that there were just as many public submissions putting the opposite point of view.

Linked with the Development Bill is the Statutes Repeal and Amendment (Development) Bill, in particular Section 11 which provides transitional arrangements for EISs required up to three years previously under either the Planning Act 1982, or the City of Adelaide Development Control Act 1976. In these cases the EIS could proceed to official recognition under either of the former Acts or the new Development Act.

The Development Bill was passed by the Government in May 1993 and a Development Act should be assented to by June 1993 and come into effect by October or November 1993, at which time the legislation will take effect. When the legislation was finally passed, three amendments were made that affect the EIA provisions. These are Amendments 31, 32 and 33 which essentially require the Minister to take into account criteria (to be contained in regulations) when considering whether or not an EIS should be prepared, and that the Minister should undertake public consultation in the formulation of EIS guidelines.

#### ANZECC NATIONAL APPROACH TO EIA 1991 AND IMPLICATIONS FOR SOUTH AUSTRALIA

In 1990, a special Premiers' conference established the need for an intergovernmental agreement on the environment including the development of a national approach to environmental impact procedures throughout Australia. In response the Australian and New Zealand Environment and Conservation Council (ANZECC) established a working group to prepare this national approach. The working group, which comprised EIA practitioners from individual States, Territories and the Commonwealth, took note of concerns expressed about adopting a national and prescriptive approach to EIA (Bailey and English, 1991) and took a more pragmatic approach. The working group subsequently completed its report and accompanying background paper (ANZECC, 1991a&b).

Although, another EIA working group (one of thirty seven specialist groups) was set up early in 1992 under the umbrella of an intergovernmental ESD working group, this EIA working group will provide an input to an ESD implementation programme and it also contributed to the recently published ESD and Greenhouse reports (there is a separate Greenhouse inter governmental working group) rather than produce another public document on EIA (Commonwealth of Australia 1992a, 1992b). However, there is some scepticism that the overall process could become a 'burial ground' for the ESD reports (Hare, 1992).

The national approach on EIA (ANZECC 1991a) identifies key areas of agreement between the States on the objectives of EIA in Australia and outlines the principles of EIA for four different groups; assessing authorities, proponents, the public and, government.

The national approach on EIA is generally consistent with current EIA procedures in South Australia but there are a number of exceptions.

The connections drawn between EIA and ESD (Section 4) do not relate to South Australian EIA as currently practised. In fact the EIA/ESD connections appear to be identified as an exercise in bureaucratic accountability rather than using ESD principles to suggest some innovative ways in which EIA can help.

The section on national principles (pp 4-9) does not relate directly to South Australia because there are no criteria for determining which types of proposals should attract an EIS. This section also contains a number of areas where the South Australian legislation is currently deficient such as consideration of cumulative effects, monitoring and compliance audit activities, co-ordinated Government decision making incorporating EIA outcomes, and project specific evaluation timetables.

Section 6 deals with the national practice for EIA in Australia. It first suggests that EIA principles should be incorporated into policies and major programmes. This is not currently done in South Australia although some EIA related processes are implicitly used through mechanisms such as the SDP process. Second the suggested clear criteria are not in the South Australian legislation. Third, the suggestion of more than one level of assessment implies the adoption of a PER such as was introduced into the Federal legislation. Attempts to introduce such a level in South Australia have previously failed.

#### ESD INITIATIVES 1991/92 AND LINKAGES WITH THE NATIONAL APPROACH FOR EIA

Sustainable development was defined by the World Commission on Environment and Development (WCED) in 'Our Common Future' as that which *meets the needs of the present without compromising the ability of future generations to meet their own needs* (WCED 1987 p8). This report (also known as the 'Brundtland Report') suggests that economic development and environmental well-being are not mutually exclusive goals. The report recognises that current economic development is not environmentally or socially sustainable and that action is necessary if there is going to be continuing economic development and the world is going to live within its ecological means.

The key elements of sustainable development relate to the concept of needs and the restricted environmental ability to meet these needs, both present and future. Sustainable development is a process of change in which *the exploitation of resources, the direction of*

*investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations* (WCED 1987 p90).

In order to achieve critical sustainable development objectives for environment and development policies, it is important to have strategies such as; conserving and enhancing the resource base, reorienting technology and managing risk and, merging environment and economics in decision making (WCED 1987 p93). The latter of these strategies, is particularly relevant for environmental impact assessment (EIA) as an integrative process which can help avoid environment and development problems arising from the sectoral fragmentation of responsibility.

The Commonwealth of Australia released a discussion paper, 'Ecologically Sustainable Development' (Commonwealth of Australia, 1990) and in this it defined the following broad areas of operational principles which it considered necessary for the implementation of a sustainable society;

- improvement in material and non-material well being
- intergenerational equity
- intragenerational equity
- maintenance of ecological systems and protection of biodiversity
- global ramifications, including international spillovers, international trade and international cooperation, and
- dealing cautiously with risk, uncertainty and irreversibility

In the same document the Commonwealth government proposed the establishment of nine working groups to consider the implementation of ecologically sustainable development (ESD) principles in sectors of Australia's economy which have major impacts on the environment.

Notwithstanding major criticisms of the discussion paper by Australian conservation groups (Hare, 1990), the nine working groups were set up in 1990 and their final reports were publicly released in December 1991 (Commonwealth of Australia, 1991a-i).

The national approach on EIA (ANZECC 1991a) identifies key areas of agreement between the States on the objectives of EIA in Australia and outlines the principles of EIA for four

different groups; assessing authorities, proponents, the public and, government. Within these four sets of principles, ESD is given only a passing mention in one set relating to assessing authorities.

The national approach suggests that EIA is just one of many methods for achieving ESD and outlines some of the major connecting points where EIA can assist in achieving ESD:

- *the use of resources by present generations is achieved while protecting the interests of future generations through, for example:*
  - *maintaining and enhancing natural capital (for example clean water, clean air, uncontaminated soil)*
  - *avoiding over-exploitation of renewable resources*
  - *minimising waste*
- *protection of biodiversity and ecosystem integrity*
- *provision of net community benefits from proposals that are implemented*
- *social equity, for example through public participation in the decision-making process*
- *reflection of full environmental costs of proposals in decisions on resource use*
- *caution in dealing with environmental risk and irreversibility (ANZECC, 1991a, p4).*

The background paper to the national approach on EIA attempts to illustrate in diagrammatical form the context for EIA within an ESD framework (ANZECC, 1991b p4) to show how sustained outcomes are achieved. The background paper also lists some of the key issues regarding the relationship between EIA and ESD. These issues which were raised mostly in response to a draft of the national approach are as follows; confusion over the definition of 'sustainable', need for a consistent approach to both EIA and ESD, need for a precautionary principle, avoidance of economic factors overriding environmental ones, EIA should be part of ESD but if so it needs more comprehensive parameters, and the need to include many principles and strategies of ESD within EIA (ANZECC 1991b, p8). However, not all of these suggestions were incorporated into the national approach on EIA (ANZECC 1991a).

While all nine sectoral ESD reports were intrinsically concerned with environmental impact of the relevant sector of the economy, the importance of EIA as a process within each



sector is interpreted quite differently. For this reason not all of the reports make recommendations about linkages between the relevant sector of the economy and EIA, although most make reference to the EIA process.

From an examination of the nine ESD reports (Harvey 1992b) it is apparent that the EIA process has been interpreted by the various working groups as being more important for some sectors of the economy such as tourism and mining than others such as agriculture, energy use and fishing

Of those ESD reports which have specifically addressed the EIA process Harvey (1992b) identifies some common threads;

- 1) a need for a more streamlined, integrated and consistent approach to EIA between the States and the Commonwealth. This includes the development of credible, clear and open criteria.
- 2) a need for greater certainty about the triggering mechanism for EIA and clearer guidelines on the level of assessment required.
- 3) a need for EIA to consider cumulative and long-term impacts.
- 4) a need for public participation early in the process in order to be effective.
- 5) a need for some kind of post-development auditing of projects which had undergone the EIS process.

It is evident that each of the above five principles have been identified to some extent in the ANZECC EIA report within the national principles for assessing authorities, proponents, the public, and government. The EIA report does not however specifically address these principles within the context of ESD.

The ANZECC report does not offer a new EIA process but it tries to provide a consensus on principles of EIA between the Commonwealth, State and Territories. It also recommends a single national agreement for EIA between these parties, with schedules to accommodate individual legislative arrangements.

The identification of linkages between EIA and ESD in the ANZECC report appears to be a reactive approach to the perceived need to identify those linkages, *per se*, rather than an innovative approach which takes the opportunity of proposing stronger linkages.

It is apparent that there has been an attempt to identify linkages between EIA and ESD in both the ANZECC report on EIA and also the nine ESD reports. Whilst these reports are a welcome initiative there is a danger that linkages between EIA and ESD may not be developed far enough.

The ANZECC report identifies some of the linkages but does not take this further to suggest that the proposed national agreement on EIA should include ESD principles. The report makes no recommendation for this agreement to include factors such as; integration of ecological and economic factors, transboundary environmental impacts, cumulative environmental impacts, and auditing of environmental impacts. These are seen as essential for the implementation of ESD through the EIA process. Although EIA is only a part of ESD implementation, stronger linkages would help in extending the application of EIA to policies.

The ESD reports because of their sectoral nature, are variable in their analysis of linkages with the EIA process but a few of them contain quite detailed recommendations for EIA. It is not apparent from the final ESD report (Commonwealth of Australia 1992a) that any strong linkages have been identified for further development between EIA and ESD.

#### INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT 1992 AND THE NATIONAL ENVIRONMENT PROTECTION AUTHORITY

In May 1992 the State Ministers endorsed an Intergovernmental Agreement on the Environment to establish rules for the interaction of Commonwealth, State, Territory and Local governments on environmental matters. The Agreement is divided into four Sections

- 1) application and interpretation
- 2) roles of the parties - responsibilities and interests
- 3) principles of environmental policy
- 4) implementation and application of principles

In addition there are nine schedules which are to be interpreted in accordance with Sections 1-3 of the agreement. All parties signed the agreement with the reservation of the Northern Territory in regard to sections on vehicle emission control. The schedules are:

- 1) data collection and handling
- 2) resource assessment, land use decisions and approval processes
- 3) environmental impact assessment
- 4) national environment protection measures
- 5) climate change
- 6) biological diversity
- 7) national estate
- 8) world heritage
- 9) nature conservation

Schedules 3 and 4 are the most relevant for EIA. Schedule 3 endorses a common set of principles for the conduct of EIA and Schedule 4 provides for the setting up of a National Environment Protection Authority (NEPA). The NEPA will be a Ministerial Council with one Minister from each of the States, territories and the Commonwealth. The NEPA will be responsible for establishing nationally applied measures for environmental protection matters, producing agreed national environmental quality standards and monitoring their enforcement and implementation, and take an active part in environmental research, environmental education, establishing common data bases and in the state of the environment monitoring.

#### COMMONWEALTH ENVIRONMENT PROTECTION AGENCY

In August 1991 the Commonwealth government established the Commonwealth Environment Protection Agency (CEPA) as a separate organisation within the Department of Arts, Sport, the Environment and Territories (DASET, now DEST). The new agency will have an active policy formulation role and work together with the NEPA and particular interest groups as part of a nationally coordinated approach to environment protection with an aim to:

- develop clear national ambient standards
- develop well-defined processes for decision making
- agree on effective consultative arrangements for better environmental management

Of direct relevance to EIA is the fact that the CEPA has been given responsibility for administering 12 different Acts including the Commonwealth Environment Protection (Impact of proposals) Act 1974. It also has direct responsibility for undertaking national monitoring and reporting on the state of the environment, conducting environmental hazard

assessments, to promote national approaches to environmental protection and administrative responsibilities for some international environmental agreements, such as ozone and hazardous wastes.

One of the immediate priorities given for the CEPA is to *review and improve environmental impact assessment processes in Australia and internationally* which is intended to *better recognise industry and government needs and simplify the application of the legislation* (CEPA 1992).

#### SOUTH AUSTRALIAN ENVIRONMENT PROTECTION AUTHORITY AND THE ENVIRONMENT PROTECTION BILL 1992

In a similar manner to the CEPA the Office of the South Australian Environment Protection Authority (SAEPA), established in 1992, is a separate agency within the South Australian Department of Environment and Land Management. However the SAEPA is geared more towards pollution control and does not have a direct administrative responsibility for EIA legislation as does the CEPA. As noted above this responsibility rests with the Office of Planning and Urban Development.

The Office of the SAEPA consists of around 90 staff most of which have been drawn from existing Government departments and agencies in an attempt to amalgamate related functions. The new legislation (being re-drafted as at the end of April 1993) will initially replace and consolidate the following pieces of legislation:

- the Clean Air Act
- the Beverage Container Act
- the Environmental Protection Council Act
- the Noise Control Act
- the Marine Environment Protection Act
- the Waste Management Act
- parts of the Water Resources Act (licensing of polluting discharges)

The SAEPA will be a statutory board of five members who will be selected from the following areas of expertise:



- environmental health
- resource economics
- protection and management of natural resources
- the management and prevention of wastes
- local government environment management
- environment management industry

Although the Office of the SAEPA is a division of the Department of Environment and Land Management, the SAEPA itself has some areas of independence in relation to:

- granting licences and setting conditions
- over-seeing the system of monitoring and reporting
- supervision of environmental audits, improvement programs and clean-up
- prosecutions

The main thrust of the Environment Protection Bill is to replace South Australia's separate laws regarding air, land and water pollution and waste with one unified piece of legislation. It is however, linked with the Development Bill (passed in May 1993) which deals with initial development authorisation as opposed to the Environment Protection Bill which deals with the on-going environmental oversight of activities.

Section 66 of the Environment Protection Bill is relevant to EIA since it relates to criteria for decisions of the Authority in relation to development applications. Section 66 states that the Authority *must have regard to the objects of this Act and any applicable environment protection orders or policies* in determining whether or not to concur in granting development approval, or directing refusal, or directing the imposition of conditions. This provides a link with Section 34 of the Development Bill which requires that an EIS is referred to the SAPEA for comment.

The staffing and resourcing of the Office of the SAPEA is also an important question which will impact on the operation of EIA in practice and may influence its future role. Immediately following the formation of the first Arnold ministry there was debate over whether or not the EIA function should rest with the SAPEA or the Office of Planning and Urban Development (OPUD). The decision to leave the EIA function with OPUD rather than the SAPEA means that the EIA function is more closely linked with decision makers

but loses the semblance of environmental independence that might have been associated with the SAPEA.

## SOUTH AUSTRALIAN NATURAL RESOURCES ACT 1992

In 1992 the Natural Resources Council Act of South Australia was passed. This legislation, enabled the setting up of a Natural Resources Council. The Council is a body providing advice, but not making decisions, on policies and programs relating to the identification, allocation, use and management of the State's natural resources. This role is quite separate from the standard setting and enforcement role of the SAPEA.

The membership of the Council comprises the Chief Executive Officers of the agencies of government with responsibilities for natural resources, an independent presiding Officer, the non-government Presiding Officers of the Soil Conservation Council and Water Resources Council, a representative of the Local Government Association and two non-government nominees of the Minister.

The objectives of the Natural Resources Council are as follows:

- to assist the State government in making decisions about policies concerning ecologically sustainable management of the State's natural resources
- to provide a broadly based source and channel of information on the identification, allocation, use and management of South Australia's natural resources
- to provide a forum for the participation of the community in the development and formulation of the natural resource management policies of the State government

In order to achieve these objectives, eight functions of the Council are set out together with three general policy principles to form the basis of advice. It is interesting to note that one of the functions is to *investigate and report on specific natural resource issues and policies* and that the Council has already become involved in the EIA process by funding an EIS study for a major drainage scheme in the southeast of the state.

## SUMMARY

There have been a number of legislative changes and proposed changes which are likely to affect EIA in South Australia. The most important of these is the Development Act of 1993

which will take effect later in 1993. This Act will replace the Planning Act of 1982 and embodies the South Australia EIA legislation but is also linked with the Environment Protection Bill. From a functional perspective, the EIA process in South Australia will be operated under OPUD and the roles of DELM and SAPEA will be advisory only. At the Commonwealth level the CEPA has responsibility for the EIA process and where relevant would liaise with OPUD at the State level in terms of any joint environment assessment.

The national approach on EIA does not have an overriding impact on the new South Australian EIA legislation. However, the national approach together with the intergovernmental agreement on the environment provide a framework for greater consistency in EIA practice throughout Australia.

## CHAPTER SIX

### CONCLUSIONS

The EIS process in South Australia has been operating for over eleven years under the South Australian Planning Act, since it was assented to on 21 January 1982. This thesis has discussed the evolution of the current system of EIA in South Australia and examined all the EISs completed under this piece of planning legislation in order to better define the role of the EIS.

The introduction of EIA into the South Australian Planning Act in 1982 was a natural progression from the creation of the Commonwealth Environment Protection (Impact of proposals) Act in 1974, which in turn had taken a lead from the creation of the United States National Environment Policy Act of 1970. The success of the NEPA was probably related more to the timing of its introduction and the success of early court decisions, rather than being a radical environmental policy. The continued involvement of the judiciary in the United States has reinforced the status of the NEPA, and in particular the EIS in environmental decision making.

In Australia, there was a deliberate attempt in drafting EIA legislation to avoid a major judicial influence over the EIA process. The Commonwealth Environment Protection (Impact of Proposals) Act was introduced in 1974. South Australia was slow to follow suit. Early Cabinet agreements in 1977 and 1979, made provision for EIA procedures in South Australia and outlined co-operative EIA procedures with the Commonwealth government. However, it was not until 1982 when EIA was introduced into South Australian legislation as part of the Planning Act.

Under the Planning Act, EIA operates at two levels with minor projects being dealt with through the normal planning system at either local or State government level. Major projects, however, are handled through the EIS procedure when the projects are 'in the opinion of the Minister' (for the Environment) of 'major social, economic or environmental importance'. These discretionary criteria give considerable control to bureaucrats and politicians, and allow very little role for the judiciary.



This thesis has demonstrated that there are some problems with the EIS process as it is currently practiced. For example, the Assessment Report currently has no status in the legislation and in practice it has been incorporated as the Minister's amendments to the EIS. The validity of this practice appears open to legal challenge especially where there may be conflict between the proponent's draft EIS and the Government's assessment as occurred with the Jubilee Point project. In this case a legal challenge was averted by a co-operative 'vetting' of the Assessment Report between senior government officers and the proponent's consultants. This raises the question of the independence of the assessment if the proponent influences the advice to the Minister.

There is a problem with the lack of a time frame (apart from public exhibition) for both the Government and the proponent. Since the EIS requirement essentially 'stops the clock' on a development application (although not many EISs start with a normal development application), the Government cannot process an application which is still pending the completion of an EIS. In one case, an attempt by Government to reject a project with an uncompleted EIS on the basis of insufficient information, was overruled because there is no time frame for a proponent's response or Supplement.

There is also a problem for the proponent at the end of the process if there is a delay in official recognition. This occurred for the Waterloo Corner EIS, where the proponent reminded the Minister of the legislative requirements that the Minister 'shall' give official recognition to an EIS if the EIS documentation is satisfactory.

Although there are some problems with the EIS procedures there has never been a legal challenge to challenge and perhaps better define the procedures. In one case (Wilpena Tourist Resort) the exemption of what was essentially a private project from a decision under the Planning Act was challenged, unsuccessfully, in court. The project was processed through the system as a Crown development on behalf of National Parks but even so was exempt by Regulation 59 from notification under Section 7 of the Act, because it was deemed to be in accordance with an approved management plan for a national park.

In another Regulation 59 exemption case (PASA pipeline project), the exemption from Section 7 notification for Crown development appears to have been illegal because the project was under coastal land. However, this was never challenged even though it was in an environmentally sensitive aquatic reserve area.

The EIS in South Australia has escaped legal challenges and court cases such as those associated with EISs in the United States. The loopholes and problems in the South Australian legislation are still there apart from some minor changes such as reducing the public display time from eight to six weeks, or removing decision making on EIS projects from local councils. Thus the judiciary has not played an important role in shaping the EIS process in South Australia.

The discretionary criteria make it difficult to assess the role of the EIS, without examining the EIS process in practice, and in particular for those projects with completed EISs. This thesis has attempted to provide an overview of the types of projects which have attracted EISs. These have been categorised into generic groups for the purposes of discussion. The thesis shows that out of 60 EISs required under the Planning Act only 34 have been completed for various reasons. The 27 marina projects represent by far the largest group of EIS projects.

The thesis focuses on the 34 completed EIS projects and provides an overview of the types of environmental issues raised for each project, the timing of various elements of the EIS process, public involvement, government liaison, decision making processes, legislation used, and decision makers. A number of conclusions can be drawn from these data.

The application of the discretionary criteria is not consistent and often relies on precedents. For example it could be argued that the Whyalla and Tumby Bay marinas are marginal in terms of EIS requirements and had been caught up in a string of other marina proposals, largely on the metropolitan coast where there were genuine environmental concerns. Ideally, there should be a comparison between major projects with and without EIS requirements, but this is beyond the scope of this thesis. However, projects such as the Grand Prix, the ASER project and the Tandanya tourist proposal, which all happened to have strong Government involvement, have been cited as candidates for an EIS. So far there has never been an EIS required for a major project within the city of Adelaide. This indicates a bias against the application of the EIS criteria where the Government is keen to facilitate projects.

This facilitation of projects also can occur where an EIS has been completed. The Whyalla marina project was clearly 'fast tracked' by the use of Section 63 of the Planning Act as the 'Minister's scheme' even though the Minister had very little interest in the project. Similarly the attempted use of Section 63 for another marina project at Marino Rocks,

appeared as blatant Government facilitation of the project. An EIS was eventually required, but never completed, and it is now unlikely that Section 63 will ever be used again for an EIS related project. Elsewhere, the constraint of the Development Plan on SAPC decisions has resulted in an increasing use of Section 50/51 of the Act where the Government can facilitate projects and avoid third party appeals.

Associated with increasing use of Section 50/51 is the limited role of the SAPC in decision making. Where the SAPC has been involved, it has been necessary to link much of the EIS studies with SDP procedures at the same time. The SAPC has been involved in less politically 'high profile' projects. Two marinas (Jane Eliza and Wallaroo) and one tourist project (Granite Island) were approved but never completed, although Jane Eliza was partially completed before the developers went bankrupt. All had detailed planning negotiations and SDPs to resolve any conflicts with the Development Plan. A fourth project (Wellington marina), went through the EIS process but was rejected on the basis of conflict with the Development Plan. This is the very reason that decisions are removed from the SAPC through Section 50/51 if the Government wants to facilitate a planning approval. In this case it did not.

The Government facilitation of some projects has angered the conservation lobby but there are also a number of cases where the EIS process has not produced the desired Government result. A classic example of this was the Jubilee Point project where there was a Government steering committee to facilitate the project. Even when the assessment was unfavourable, the Government held an 'independent' inquiry before it reluctantly rejected the proposal. The Waterloo corner EIS proved a useful process for the proponent who managed to successfully appeal against local council and Waste Management Commission opposition to the project.

A major victory for the conservation (and anti-marina) lobby was the Sellicks Beach marina proposal which was rejected under Section 51 by the Governor. Political nervousness at the time was probably associated with the then recent 'green' backlash in Tasmania. The marina proposal, which had a record number of public submissions on the EIS, was in the constituency of the then Deputy Premier and Minister for the Environment. The portfolios were changed before a decision had to be made. No reasons were ever given for the rejection of the project, although the aboriginal heritage issue figured prominently behind the scenes. The effect of cutting the beach and aesthetic impacts were some of the implicit reasons for the rejection.

Politics was also involved at Kingston Park where an EIS marina project was rejected by the sitting member of parliament, in a marginal electorate, before the EIS was prepared. Similarly, the nearby Marino Rocks marina project in the same State electorate, was associated with cliff top banner waving by the Premier and Minister for Environment prior to a State election. Notwithstanding these actions, the seat was lost.

The role of the public is difficult to gauge by public submissions alone, although the rejected proposals are often associated with high levels of public submissions. Public rallies, meetings and opposition groups have been prominent for certain marina projects. A number of EIS projects, such as the Port Wakefield defence facility, have been associated with large numbers of petition signatories. Projects such as Wilpena have also been associated with rallies and strong anti-project coverage in the press.

This thesis shows that a large number of the EISs attract very little public comment in the form of public submissions, suggesting that either the issues are not considered important enough or that sufficient information has been provided to satisfy any public concern. The role of public involvement in the EIS process is probably an area that requires further research.

It is evident from this thesis that very few projects with completed EISs have been rejected. This suggests that by the time an EIS has been completed that most of the environmental concerns have either been resolved or are capable of being resolved. Alongside the low rejection rate, there is also a high drop out rate where many EISs are not completed, suggesting that some projects are dropped because problems become apparent through the EIS process. These two factors suggest that the EIS is an effective process in terms of identifying environmental issues and where possible allowing for amelioration of those issues or modifications to the project.

Against the background of the 34 completed EISs are a number of recent legislative and administrative changes, in addition to proposed changes to EIA in South Australia. On the national level there has been the formation of the CEPA which now administers the Commonwealth EIA legislation, an inter governmental agreement on the environment (including EIA) and the ANZECC national approach to EIA in Australia. The national moves on EIA come at a time when the State legislation is being modified. The national approach provides for uniform principles which do not require radical changes in the State

EIA legislation. However, the national approach does highlight some deficiencies in the State legislation such as the lack of clear EIS criteria, the need for timetabling, the lack of monitoring, and a need for coordinated decision making.

At the same time as the national approach on EIA has been developed, there has also been the development of a Commonwealth ESD strategy. It is clear that there is a need to incorporate some of these ESD principles into South Australian EIS processes. For example, requirements to examine the cumulative impact of projects, the inter-regional or inter-national environmental impacts and monitoring of environmental effects are non-existent in the South Australian EIS process.

This thesis notes that the South Australian government is slow to act regarding changes to the EIS process. It took about 10 years for the introduction of the EIS into South Australian legislation. Although an EIA review was initiated in 1984, it is going to be almost 10 years before any changes are implemented. It is apparent that most of the major changes recommended in the review process have not been incorporated into new legislation. In 1987 it was recommended that there should be an intermediate level of EIA called a public environmental report (PER). Nothing was done at the State level but in the same year the Commonwealth government introduced the PER into its legislation. In South Australia there are a few Commonwealth PERs which otherwise might be State EISs.

The Government produced a White Paper on EIA in 1989 which watered down some of the EIA review committee's recommendations. Even so, the Government has become more concerned about any legislative changes which would reduce its control over the EIS process. The Government push for a 'development' approach has been associated with proposed legislative changes to the EIS process which give it greater control over decision making. It is proposed that decisions on all projects with an EIS will be made by the Governor. There is no longer any suggestion of an independent review panel as part of the EIS process. While these proposed changes may please the development lobby, they are not likely to find favour with conservationists. The indecision by the State government to do anything has resulted in public scepticism over the EIA review process, which included public meetings and numerous public submissions. That review process was eventually overtaken by a pro-development push by the Government in order to boost an ailing State economy.

The proposed changes give even more decision making control to the Government. All decisions on EIS projects will now be made by the Governor with no third party appeals. Decisions on Crown developments are to be made by the Minister, with a report provided by the SAPC. However, the new Act will make the Assessment Report part of the EIA documentation which has to be considered in the decision making. An important provision in the new Act is the provision for an early rejection of a proposal.

## THE FUTURE ROLE OF THE EIS

With the passing of the Development Bill through the South Australian parliament in May 1993, the prospect of any independent EIA authority in South Australia has disappeared completely. The new Development Act will take effect towards the end of 1993 and replace the current Planning Act of 1982. Decision making on EIS projects is now going to be placed firmly in control of the Government which has the potential for fast tracking of projects and the opportunity for early refusals of others.

Although there have been national moves on EIA and ESD it is difficult to see the prospect of any real changes being translated from these into the EIS process in South Australia. It has been shown that the preparation of the ESD strategy has not incorporated strong linkages with EIA. However, the national approach to EIA and the inter governmental agreement on the environment are likely to have an impact on the practice of EIA in South Australia. Although these have little effect on the new South Australian EIA legislation, they will encourage greater consistency in the application of EIS criteria. This move will be reinforced once a set of nationally accepted criteria for EIS projects has been drawn up. This set of criteria is in the final stages of drafting with ANZECC and should be adopted in late 1993. This should place constraints on the previously widely used discretionary criteria for requiring an EIS in South Australia.

The new legislation fails to provide an intermediate EIA process such as the PER. This means that the EIS is the only mechanism for public scrutiny and assessment of projects with potential major environmental impacts in South Australia. Thus there are likely to be only a small number of the more controversial projects subject to the EIS process. Under the old system there was an average of just over five EISs required per year and an average of only three per year completed. These numbers are now likely to be even lower. Perhaps the major projects which are essentially public works projects, such as the transmission lines, major roads and pipeline projects, will be subject to a different form of EIA.

The combined effect of fewer EIS projects and a reduced public accountability is likely to further polarise the environment-development debate in South Australia. Although the SAPC previously had a reduced role in decision making on EIS projects, the option existed for a publicly appealable process. The new legislation does provide a mechanism for delegating the Governor's decision to the SAPC but lacks third party appeal rights.

The future of the EIS in South Australia will first see the remaining EISs completed under the old Planning Act. There will then be a teething period when the first few major projects have requirements for an EIS under the new Development Act. At this time it is likely that there will be a raised public awareness of the reduced public accountability of the EIS process. This will bring pressure on the Government assessment of each EIS and will probably force the Government to be seen to be independent. This is most likely to be done by the publicised inclusion of 'independent' assessors to assist in the Government's assessment of an EIS. Notwithstanding such political manoeuvres, there is a real possibility that an EIS project under the new legislation may bring greater confrontation between the conservation movement and environmental lobby groups on the one hand, and the Government and the development lobby on the other.