

Illustrative examples of cumulative impact approaches from other jurisdictions



August 2023

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Summary

This document collates international policy documents and references in Australian state legal and policy arrangements to support several recommendations in the Wentworth Group of Concerned Scientists' report 'Preventing Death by a Thousand Cuts: Addressing Cumulative Impacts to Matters of National Environmental Significance (MNES) through Reforms to the EPBC Act' ('Report'), and selected other points. Key messages are:

- International best practice requires addressing cumulative impacts at both the project and regional level;
- Consideration of cumulative impacts appears often in the environmental laws of Australian states;
- Diverse industries (renewables, mining, transport) recognise that addressing cumulative impacts is required for social licence – it would be counter-productive to ignore these impacts, even for important industries;
- Internationally, cumulative impacts are a major concern to communities, especially First Nations, policy expressly addresses this, and overlooking this aspect represents a key risk;
- Where cumulative impacts are already significant (e.g. a species is endangered), federal laws may impose significant regulatory protections on even minor activities, even where states also have their own laws that typically regulate these kinds of activities; and
- Interoperable and reusable data are a valuable feature of law and policy for efficient consideration of cumulative impacts, and other Commonwealth laws as well as approaches in other jurisdictions adopt data standardisation requirements that would be useful to reflect in EPBC reforms.

It should also be reiterated that the Commonwealth lags the Australian states and nearly all other developed countries in currently lacking reference to cumulative impacts in generally applicable environmental impact assessment legislation.¹

For convenience, references to relevant recommendations of the Draft Report that are supported by these examples are given as [\[Rec #x\]](#). References to other points are noted as [\[topic\]](#).

Examples of international policy and regulatory approaches related to cumulative impacts

[Rec #1] Internationally, some relevant laws **include references to cumulative impacts in their objects and purposes provisions**, e.g. the Canadian *Impact Assessment Act* of 2019 includes the purpose 'to encourage the assessment of the cumulative effects of physical activities in a region and the assessment of federal policies, plans or programs and the consideration of those assessments in impact assessments' (section 6(1)(m)).

[Rec #2] Some illustrative examples of definitions of 'impact' (or similar) that include cumulative impacts in laws of Australian states and of other high-income countries:

- Under amendments made in 2020, Western Australia's *Environmental Protection Act 1986* states that 'the effect of a proposal on the environment includes a reference to the cumulative effect of impacts of the proposal on the environment' (section 3(1B)).

¹ See the map here: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/latent-potential-of-cumulative-effects-concepts-in-national-and-international-environmental-impact-assessment-regimes/2219738FCAA04243F83CAFEE02DB4610#fig01>. Nelson, R, & Shirley, LM. (2022). The Latent Potential of Cumulative Effects Concepts in National and International Environmental Impact Assessment Regimes. *Transnational Environmental Law*, 1-25.

- Victoria's *Environment Protection Act 2017* defines the terms 'harm' and 'material harm' to include 'the cumulative effect of harm arising from an activity combined with harm arising from other activities or factors' (sections 4 and 5).
- The Northern Territory's *Environment Protection Act 2019* defines 'impact' to include 'a cumulative impact [which] may occur over time' (section 10(2)).
- Sweden defines 'environmental effects' as 'direct or indirect effects that are positive or negative, which are temporary or permanent, which are cumulative or not cumulative and which occurs in the short, medium or long term ...' Swedish Environmental Code (1998) Ch 6 section 2
- Malta: "'effects" include: (g) secondary, cumulative, short, medium and long term, permanent, temporary ... effects' Environmental Impact Regulations 2007 part 1, art 2

[Rec #4, #6] Adopting a cumulative impact assessment requirement for projects at the Commonwealth level would be consistent with reflecting it in the water trigger under the EPBC Act as it stands, and with **project-level cumulative impact assessment in Australian states**, e.g.

- In NSW, cumulative impacts of state significant projects are assessed under the *Environmental Planning and Assessment Act 1979* in NSW: see NSW Department of Planning and Environment, *Cumulative Impact Assessment Guidelines for State Significant Projects* (October 2022), <https://www.planning.nsw.gov.au/sites/default/files/2023-03/cumulative-impact-assessment-guidelines-for-ssp.pdf>
- In Queensland, cumulative impacts of coordinated projects are assessed under the *State Development and Public Works Organisation Act 1971* (see <https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects/the-coordinated-project-process/environmental-impact-statement-impact-assessment-report>) and in relation to the Great Barrier Reef, under the *Reef 2050 Plan Cumulative Impact Management Policy* (2018) (see <https://elibrary.gbrmpa.gov.au/jspui/retrieve/cd018a9d-2705-4d0f-a636-35cde88326d6/Reef-2050-cumulative-impact-mngt-policy.pdf>).
- In Victoria, cumulative impacts of projects are assessed under the *Environment Effects Act 1978*: see *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (2006), https://www.vgls.vic.gov.au/client/en_AU/search/asset/1012350/0

[Rec #4] Under international regulatory approaches, the more serious existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant, e.g.:

- Under California's legal requirements for project-level assessment, "[A] project's cumulative environmental impact cannot be deemed insignificant solely because its individual contribution to an existing environmental problem is relatively small." (*San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 Cal.App.4th 202, 223.)
- Under the U.S. *Endangered Species Act* of 1973, it is strictly prohibited for any person to 'take' a listed endangered species without undertaking a regulatory process, where 'take' is defined very broadly to include harming an individual of the species, including by modifying habitat. This **affects activities that might otherwise be considered minor**, as well as substantial activities (e.g. residential construction, pipeline construction, some agricultural activities). A landholder must either refrain from 'taking' an endangered species, or obtain a relevant authorisation. One way to obtain an authorisation is for the landholder to obtain an 'incidental take permit' with a habitat conservation plan. To simplify this process, the landholder may choose to join a 'programmatic habitat conservation plan', which may be county- or region-wide, rather than creating their own. This pathway to compliance reduces regulatory burdens for landholders (e.g. enabling them to pay a mitigation fee to support conservation efforts) while still minimising and mitigating impacts to the maximum extent practicable. Further information: <https://www.fws.gov/service/habitat-conservation-plans>.

[Rec #6] Many jurisdictions with well-established cumulative impacts provisions in their environmental protection laws have provided **detailed, high-level advice on how to produce scientifically robust cumulative impact assessments**, for example:

- Commission of the European Communities, (1999). *Commission of the European Communities Guidelines for the Assessment of Indirect and Cumulative Impacts as well as Impact Interactions*, <http://ec.europa.eu/environment/archives/cia/cia-studies-and-reports/pdf/guidel.pdf>
- Council on Environmental Quality (U.S.). (1997). *Considering Cumulative Effects under the National Environmental Policy Act*, https://ceq.doe.gov/publications/cumulative_effects.html
- Impact Assessment Agency of Canada. (May 2023). *Policy Framework for Assessing Cumulative Effects under the Impact Assessment Act*, <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/policy-framework-assessing-cumulative-effects-under-impact-assessment-act.html>.

[Rec #6] In some jurisdictions, this is complemented by **policy guidance for specific sectors or in specific contexts**, for example:

- Transportation projects: California Department of Transportation. *Guidance for Preparers of Cumulative Impact Analysis – Approach and Guidance* (2005). <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/approach-and-guidance-a11y.pdf>
- Impacts of chemical exposures on humans and ecosystems: U.S. EPA. *Framework for Cumulative Risk Assessment* (2003), https://www.epa.gov/sites/default/files/2014-11/documents/frmwrk_cum_risk_assmnt.pdf

[Rec #5 re First Nations] Additional cumulative impact policies in some jurisdictions highlight that **cumulative environmental impacts are a key justice issue of concern to communities** who experience disproportionate environmental burdens, **including First Nations** and provide additional policy guidance for accompanying analysis, e.g.:

- Office of General Counsel, USEPA. *EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum* (Vol. Publication No.: 360R22002): U.S. Environmental Protection Agency, <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>. This document is an addendum to ‘EPA Legal Tools to Advance Environmental Justice’, available at <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>.
- Canada’s policy framework for strategic assessment includes a **strong focus on consultation and collaboration with First Nations**: Impact Assessment Agency of Canada, *Policy Framework for Strategic Assessment under the Impact Assessment Act* (2022), <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/policy-framework-strategic-assessment.html>

[Rec #8] Examples of **interoperable data requirements** are found in existing Commonwealth law, as well as the laws of other jurisdictions:

- The Commonwealth Water Regulations of 2008 require specified persons to give water information to the Bureau of Meteorology using standard units, and complying with metadata requirements (Part 7). This enables the data to be aggregated.
- The Commonwealth *National Greenhouse and Energy Reporting Act 2007* requires relevant facilities to measure and report greenhouse gas emissions in standard ways (section 19) using an electronic system (the Emissions and Energy Reporting System), facilitating data aggregation: <https://www.cleanenergyregulator.gov.au/OSR/EERS/The-Emissions-and-Energy-Reporting-System>
- Internationally, the concept used to describe interoperable data that maximise potential for efficient reuse and aggregation is ‘FAIR’ - findable, accessible, interoperable, and reusable.²
- The U.S. Environmental Protection Agency’s data standards policy promotes transparency and the exchange and multiple use of data between that agency, states and tribes: <https://www.epa.gov/irmpoli8/policy-and-procedures-epas-data-standards>.

[Social licence and industry] Diverse industry sectors recognise cumulative impacts to be a significant social licence issue, and produce their own detailed cumulative impacts assessment guidance to guide robust assessments, e.g.:

- **Offshore wind farms** in the UK (RenewablesUK is a renewables trade association): RenewableUK. (June 2013). *Cumulative Impact Assessment Guidelines: Guiding Principles for Cumulative Impacts Assessment in Offshore Wind Farms*, <https://tethys.pnnl.gov/sites/default/files/publications/Cumulative-Impact-Assessment-Guidelines.pdf>
- **Transportation projects**: American Association of Highway and Public Transportation Officials (AASHTO), *Practitioner’s Handbook: Assessing Indirect Impacts and Cumulative Impacts under NEPA* (2016) https://wsdot.wa.gov/sites/default/files/2021-10/ENV-NSEPA_AASHTOCummHndbk.pdf
- **Mining projects**: Minerals Council of Australia, *Cumulative Environmental Impact Assessment Industry Guide: Adaptive Strategies* (July 2015), https://minerals.org.au/wp-content/uploads/2023/01/Cumulative_Environmental_Impact_Assessment_Industry_Guide_FINAL_0.pdf

² Mark D. Wilkinson et al, ‘The Fair Guiding Principles for Scientific Data Management and Stewardship’ (2016) 3 *Scientific Data* 160018; <https://www.go-fair.org/>.