

Failure to Comply with Regulatory Requirement re False and Misleading Information

The Environmental Planning and Assessment Regulations require that an EIS not contain false or misleading information **and** that the person preparing the EIS declare the EIS meets that requirement.

The Biala EIS prepared by ERM contains numerous false and misleading statements and the person preparing the EIS has failed to comply with the regulatory requirement for a declaration that “the information contained in the statement is neither false nor misleading”.

I believe that the EIS should be rejected until all false and misleading information, (not just those that are noted here), has been expunged and should not be accepted until submitted under a declaration that clearly complies with the specific requirements of s. 6(f) of the Environmental Planning and Assessment Regulations.

Appropriate action should be taken against the person who submitted this EIS so riddled with false and misleading information contrary to the regulations.

Finally, the Department should review its processes to determine how it published an EIS that clearly does not comply with the regulations, and to ensure such an error cannot occur in future.

Is the Biala EIS False or misleading?

The ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000 - SCHEDULE 2 Part 3 - General provisions, part 6 (f) states in relation to an EIS:

6. Form of [environmental](#) impact statement:

- (f) a declaration by the person by whom the statement is prepared to the effect that:
 - (i) The statement has been prepared in accordance with this Schedule, and
 - (ii) The statement contains all available information that is relevant to the [environmental](#) assessment of the development, [activity](#) or [infrastructure](#) to which the statement relates, and
 - (iii) That the information contained in the statement is neither false nor misleading.

Let us concentrate on 6(f)(iii). This is not difficult to understand.

For instance in the Capital 2 EIS, we have this statement:

“I certify that to the best of my knowledge, the information contained in this assessment is neither false nor misleading.”

The regulations make no reference to declaring the “information contained in the statement is neither false nor misleading” to the “best” of someone’s knowledge. Such a statement is a declaration about the person’s knowledge, which is essentially unprovable. The regulation requires a declaration about the document actually submitted to the Department, not about unspecified limitation in the knowledge of the submitter. As the party responsible for the work, that person is required to declare that the work is actually accurate and actually not misleading and thus can be relied upon by the Department, the PAC and affected parties.

For Biala, ERM attempts to give itself the same “best of our knowledge” cover, which is not recognized in the regulations. But, it even goes beyond that, as we see in the following statement:

CERTIFICATION

We certify that we have prepared the contents of this EIS to the best of our knowledge. The EIS draws on the work undertaken by a number of technical specialists engaged as part of the Project Team with the information contained in the EIS neither false nor misleading.

They have certified something. The second sentence, as well as being strangely worded, seems to want to place the blame on their subcontractors. “Certify” and “neither false nor misleading” are certainly there, but they don’t seem to be connected.

Let us give ERM the benefit of the doubt and assume they meant to certify as per the regulations.

Example 1

In Section 2.1, we find:

2.1

Project Objectives

The objectives of the Project are to:

- provide a source of renewable energy to supplement NSW and National energy requirements and assist in reducing greenhouse gas (GHG) emissions;
- contribute to the additional generating capacity required to meet the growing energy demand in NSW;

We’d copy and paste only the relevant parts but ERM does its best to inconvenience the community by (uniquely?) supplying SECURED documents to the Department. The last sentence is incorrect. NSW has ample generating capacity to meet its needs for many years. Newtricity and ERM know that.

To find out the facts though you have to go to 2.4.3 where you discover:

It is acknowledged that the 2014 ESOO indicates that “for the first time in the National Electricity Market’s (NEM) history, as a result of decreasing operational consumption, no new capacity is required in any NEM region to maintain supply-adequacy over the next 10 years” (AEMO 2014 p1). Consistent with other states in Australia, the results for NSW indicate that, provided existing generation remains available, new capacity is not required to maintain reliability under high, medium and low economic growth scenarios until 2023-2024 (AEMO 2014).

Would that indicate to a reasonable person that the first statement is both false and misleading, and ERM can’t blame a subcontractor, because they wrote it?

Example 2

The NSW Wind Farm Guidelines (draft) under the section headed **Property Values** require:

**“Relevant considerations may include (but are not limited to):
for the area including whether the area has been identified for future subdivision
- relevant studies and credible research on wind farms and property values**

ERM, in response, states (Page 15-8) what it has provided:

Table 15-1 provides a summary of studies undertaken for Australia and internationally on the effects of wind farms on property values.

They didn’t say that table 15-1 provides a subset of studies or an example of studies, they specifically state they provided a summary of studies. The 5 studies (going back to 2003)

they then chose to illustrate that statement just so happened to support, debatedly, their efforts to prove that wind farms have no impact on property values.

Nowhere in the **summary** were any of the many studies that claim the opposite.

That is grossly misleading.

and:

“A review of available literature did not find a correlation between declining property values in proximity to wind farm developments”

ERM obviously did not review all the literature on this topic. From what they wrote, they obviously didn’t even review the “Valuer General’s Study” on which they place such reliance. That part of the statement is false.

ERM admits to finding declining property values, but not correlated to wind farms.

This statement is then “supported” by a quote from the Department relating to **one** study.

Again, misleading.

ERM can’t blame a subcontractor, because they wrote it.

Example 3

ERM states:

“Newtricity (the Proponent) is seeking approval for the construction and operation of the Biala Wind Farm,....”

A reasonable person would read into this that Newtricity is going to construct and operate the Biala Wind Farm, otherwise they would have just said “seeking approval for the Biala Wind Farm”. But we know that Newtricity (or either of the other two associated registered companies) are not going to construct or operate the Biala Wind Farm.

At the time of writing, The Newtricity web site says:

“Newtricity will make a final decision in respect to constructing the wind farm once all the necessary approvals are in place. They will consider a joint partner to build the wind farm or on sell the lease to another wind farm company”.

At a Community open day when asked why she was in business, Ms Lavery (who is Newtricity) agreed that the plan was to on-sell the approval. i.e. much clearer than the sentence on the web site.

Does the Department really believe that a sole trader operating out of a home office will construct and operate a wind farm? Virtually, the whole process up till now has been subcontracted. Even the project manager is an ERM employee.

Grossly misleading.

Example 4

In the section on health impacts (including low frequency and inaudible sound), ERM confidently states:

“Based on a review of the available literature....”

That is not just misleading, that is false. ERM did not review “the available literature”.

Example 5

- produce enough electricity to power 33,200 homes annually (based on the average NSW household electricity consumption of 7.3 MWh/year).

A false statement. Wind energy alone cannot power anything. It is intermittent and variable. For some years now the modified statement has read something like:

“The largest wind farm currently operating in NSW is the Capital Wind Farm near Goulburn (pictured next page). With a generating capacity of 141 megawatts, it supplies power equivalent to the needs of around 60,000 households.”
Source: The Wind Energy Fact Sheet.

Or

“In 2013, Australia’s wind farms produced over a quarter of the country’s clean energy, enough to power the equivalent of more than 1.3 million homes.” Source: RDAACT

(both sources do also lapse into ERM speak by omitting the qualifier “equivalent” in other paragraphs).

It is best explained by National Wind Watch:

Proponents often express projected output as “enough to power x homes.” According to the Energy Information Agency, the average US household uses 888 kWh per month, or 10,656 kWh per year. An average 1.5-MW turbine (26.9% capacity factor) would produce the same amount of electric energy as that used by almost 332 households over a year.

It must be remembered, though, that wind power is intermittent and variable, so a wind turbine produces power at or above its annual average rate only 40% of the time. That is, most of the time, it is **not** providing its average power to its average number of homes. And the times of high wind production rarely correspond with times of actual demand on the grid.

How many more examples would the Department like? There are plenty. There must be some penalty for producing a document with false and/or misleading statements in it.

The Premier has previously stated¹ that the Government would “come down hard on developers who don’t follow the rules”.

The rules (in this case the formal regulations) require wind farm developers to not include false or misleading statements in their proposals. As has been shown in the brief evaluation above, the EIS is riddled with false and misleading statements – which should have been apparent to the Department. And it has been submitted without the clear declaration required under the regulations.

By allowing this EIS to be exhibited with so many false and misleading statements, and without the unambiguous declaration required, the Department appears to be either ignoring the intent expressed by the Premier or assuming he was lying when he made that statement at the Liberal Party lunch.

The Department should adhere to the Premier’s clear statement, which is consistent with the law, and

- 1) Reject the EIS until it has been expunged of all false and misleading information and submitted under a declaration that unambiguously complies with s. 6(f) of the Environmental Planning and Assessment Regulations; and
- 2) Initiate action against the party responsible for submitting the EIS with false and misleading information.
- 3) Correct its processes to ensure it does not publish any more EIS’s that do not meet the regulatory requirements.

¹ Liberal Party luncheon in Goulburn on 22 August 2014 attended by Pru Goward, then Minister for Planning, and Premier Baird, at which Premier Baird publicly responded to questions from the audience about developer misbehaviour as evidenced by Gullen Range Wind Farm.