

False or Misleading statements from community submitters

I made an on-line submission against the Rye Park wind farm Modification 1 on June 2. As part of the process, which seems to me to have been designed to discourage submissions from the public, I had to accept the Department's submission Disclaimer and Declaration. Unlike most others, I suspect, I read every word. Towards the end I was presented with:

“It is a criminal offence under the Environmental Planning and Assessment Act 1979 to provide false or misleading information in a connection with a planning matter.”

Ignoring the extraneous “a”, I don't have much of a problem with this. All parties should submit documents that do not contain false or misleading statements. However, that is not what the Act says. The relevant sentence in the Act reads:

“A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.

There are at least two major differences. The Department version ignores the qualifier “or ought reasonably to know”, a qualifier that falls more heavily on the proponent and its consultants who are much more experienced with the truth or otherwise of an EIS or Modification report. The second qualifier ignored is “in a material particular”.

Over the years, when presented by a community member with an example of a false or misleading statement from a proponent in a wind farm EIS, many times the Department's response has been that it had no material impact on their decision.

In fact, I am not familiar, for any major project over the last five years, of an example of the Department charging anyone with a breach of this law. There have been plenty of examples of false or misleading statements, but obviously not material.

Having read the whole Disclaimer and Declaration document, I was happy to tick the box and continue with the process.

I think it is fair that submitters are judged under the same rules and methods as proponents. No doubt we have, and will, provide examples of false or misleading statements., but one thing you can be certain of, they will not be material. Even our factual statements are not material.

One must assume that the process of submitting say, an EIS or a Modification Report, via the Planning Portal requires the proponent to also tick the same box that I had to.

Except, I don't believe the proponent at the executive level does the ticking in acceptance of these terms. Some assistant would be delegated to go through that process and sign on behalf of the proponent for the Modification report in its entirety.

Perhaps the Department can advise, in the case of Rye Park wind farm Modification 1, who accepted responsibility that the Modification Report, and all the associated reports from other consultants eg Noise from Sonus and Visual Impacts from Green Bean Design, met the standards the Department imposes on me? Also the Department might clarify how they know this?

Alternatively, the proponent can answer.

Having submitted, I was immediately given a chance to withdraw it in a confirmation email.

From the email:

”In accepting your submission the Department is proceeding on the basis that you have read it carefully and have checked the accuracy of the assertions you have made in your submission and that your submission is factually correct and otherwise contains expressions of opinion which you honestly hold.”

Assertions!

Some will feel threatened.

Who wrote this? Is it based on any Act or Regulation?

Can the Department confirm that the confirmation email that goes to other stakeholders who submit eg RMS, EPA contains an identical statement?

Can the Department also confirm that the confirmation email that goes to the proponent also contains an identical statement?

Finally, can the Department also confirm, for a new wind farm, where the determining body is the IPC, the writer and signatories of the departmental Assessment have to also confirm that they have not included any statements that are false or misleading in a material particular in their Assessment? Surely, if it is not acceptable for me to provide such information to the Determining body for this modification, then it can't be acceptable for the Department to provide such information to the IPC.

If the Department chooses not to answer these questions, one can only conclude that different stakeholders are treated differently.