Indigenous Impact Assessment in Australia and Canada: Meeting Challenges inherent in proponent-driven IA

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Definition of Indigenous Impact Assessment (IIA)

- ‘A project review process designed and conducted with meaningful input and an adequate degree of control by Indigenous peoples’ (Nishima-Miller et al 2024);
- Clearly leaves room for considerable variation, a point I return to shortly;
- But ensuring ‘meaningful input’ and an ‘adequate degree of control’ means that affected Indigenous peoples have control overall all or most of the matters in the following slides.

IIA: Matters controlled by Affected Indigenous Peoples

- Governance and accountability of the IIA, via an existing Indigenous organisation or entity created for the purpose, e.g. Steering Committee';
- Focus and scope (e.g. what is 'the project'? what are 'impacts'? which impacts get most attention?)
- Methodology, e.g. where people are engaged; how people are engaged; what measures are used to identify and assess significance of impacts;
- Time frames for participation and decision-making;
- Time horizons for assessing impacts (e.g. past as context; multi-generational rather than 'life of project' for future impacts);

IIA: Matters controlled by Affected Indigenous Peoples

- Choice of consultants to undertake IA work;
- What is and is not included in Impact Assessment reports;
- How reports are used;
- Recommendations and mitigation strategies;
- Alternatives considered, e.g. ‘no development’ option, scale and configuration of project

Approaches to IIA (1): ‘Stand Alone’

- IIA is undertaken as a ‘stand along’ exercise separate from, or in the absence of, statutory Impact Assessment (IA);
- Goal is to inform decisions about whether to oppose or support a project, or to prepare for negotiation of a project agreement;
- Examples are IIAs conducted by the regional land organisation Cape York Land Council and member communities in north Queensland in 1990s and 2000s;
- Often for existing mines, no statutory IA occurring;
- IIAs used to identify negative impacts, and opportunities, and negotiations then focused on addressing these. IIA used to establish ‘log of claims’ for negotiations;
- In Canada stand-alone IIAs have been used in opposing projects, successfully in some cases, not so in others;
- Some decisions ‘not to approve’ resulted from Federal/Government regulators accepting First Nations objections (e.g. Ajax mine proposal in BC); others from political campaigning following conclusion of the IIA.

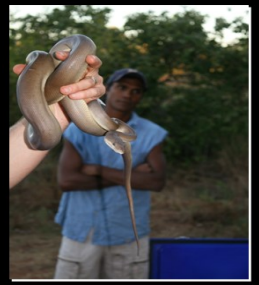
Approaches to IIA (2): Integration with Statutory IIA

- Components of statutory EIA that address Indigenous impacts are ‘extracted’ and undertaken separately as an IIA;
- An IIA Report, in full, is ‘slotted into’ the statutory Environmental Impact Statement and becomes part of the basis for government decision making. The proponent has no capacity to modify the IIA Report;
- There may be ‘public’ and ‘full’ versions of the IIA Report, with the latter used by Indigenous organisations as a basis for negotiating contractual agreements;
- Example: Strategic Assessment of proposed Browse LNG Precinct in Kimberley region, NW Australia. IIA Reports submitted alongside proponent EIS, part of basis for decisions by Federal and State Ministers.

Approaches to IIA (3): Joint Studies

- Studies for EIA are undertaken jointly by teams comprising Indigenous knowledge holders and consultants and scientists working for proponent or regulator.
- Examples:

  - Joint studies by Ktunaxa Nation and Teck of proposals to expand Teck's Swift coal mine expansion in BC;
  - Joint review of EIA by Inuit communities and Glencore for expansion of the Raglan nickel project, Quebec;
  - Site selection process for Browse LNG Precinct, Kimberley Traditional Owners and proponent and state government scientists worked in teams to establish a short list of possible sites.



Multiple Approaches for a Single Project: Contemporary EIA, Queensland

Studies Undertaken independently by Aboriginal Traditional Owners:

- Social Impact Assessment;
- Cultural values study;
- Cultural impact assessment.

Studies Undertaken Jointly: Aboriginal knowledge holders work with proponent scientists to design, conduct, and evaluate studies:

- Flora and fauna;
- Groundwater;
- Aquatic ecology.

Studies Undertaken by Proponent: Traditional Owners input is via comment on Draft EIS:

- Noise and vibration;
- Hazards, Health and Safety

= Indigenous IA

= Proponent IA

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Features of IAs

- No statutory requirement for IIA in Australia or Canada so negotiated case by case and/or driven by individual First Nations;
- Approach and scope varies considerably.
- Most focus on social and cultural impacts and strategies, as these tend to be weakest components of proponent IA;
- They are also often highly significant and sensitive and so Indigenous peoples want to control;
- Environmental studies are expensive and few have the resources to conduct independently, and so emphasis is on shaping proponent studies;
- IIAs range from short reports focusing on one aspect of impact (e.g. ‘culture’) to multi-volume studies covering a wide range of matters.

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Meeting challenges inherent in Proponent Driven IA

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Lack of Indigenous control over decision making and pro-development bias

- IIA itself cannot address these issues, which reflects wider structural forces and power relations;
- Can provide a platform through which Indigenous agency can challenge *status quo*; E.g. IIA's have been used as a basis for successful efforts to stop projects;
- This in part reflects the IIA's potential as a unifying force within communities; unity is critical in challenging existing power structures;
- IIA can play a critical role in *taking advantage* of changes in power structures;
- Growing recognition of Indigenous rights (e.g. UNDRIP) 'percolating down' to project level;
- IIA is being used to ensure the First People involves can effectively exercise this right.

Example: Crown Corporation Agreement with Native Title Group, Queensland

‘The parties will apply the principle of Free Prior and Informed Consent throughout the negotiation, pursuant to the United Nations Declaration on the Right of Indigenous Peoples, adopted in 2007’.

Reactive nature of IA

- Many commentators have noted the reactive nature of proponent driven IA, that it is always driven by something that proponents or governments want to achieve, not by Indigenous goals;
- Hirini Matunga: 'Generally the "proposition" – development, project, policy, plan or programme is "someone else's"' (n.d., 2);
- IIA can help address in three ways:
  - By starting not with a focus on 'the project', but with the question: 'What are our goals and priorities?', and then addressing the project from this perspective;
  - By using IIA as a platform to pursue community priorities separately from the project itself through negotiation of agreements. E.g. Cape York Aboriginal people and Inuit in Nunavut using project royalties to support language revitalisation across their nations;
  - Linking IIA to wider community planning process, e.g. using IIA's to build up the reliable baseline data that is essential to effective planning, assessing projects through lens of community plans. Mikisew Cree First Nation (MCFN) in Alberta has used its land use plan to shape its response to specific project proposals.

Uniformity and Lack of Flexibility

- All statutory EIA systems characterised by uniformity both within and (largely) between jurisdictions;
- Seen by regulators and proponents as essential to ‘efficiency’ and predictability;
- Means that First Peoples facing very different contexts must engage with identical process;
- IIA allows huge variability. E.g. if you reviewed 20 IIAs in Australia and Canada, wide variations in purpose, approach, focus, and methodology.

Assumption that ‘Baseline conditions’ are acceptable

- In general proponent driven IA assumes that the current environmental, social and cultural conditions are acceptable;
- The goal of IA is to show that a project will not leave the environment and people *worse off*, or that a deterioration in conditions is ‘acceptable’;
- For many First Peoples existing conditions are NOT acceptable, e.g. environmental deterioration, social and economic marginalisation;
- IIA consistently asks: can this project lead to an *improvement* in baseline conditions? If so, what is need to achieve this outcome?
- This approach can lead to quite different conclusions about the acceptability or otherwise of proposed projects.

Failure to Address Cumulative Impacts

- The literature is replete with examples of proponent-driven IA's failure to address cumulative impacts, both from the past and from other projects;
- IIA much more likely to insist on examining the impact of proposed projects on top of what has gone before;
- E.g. Traditional Owners of the Argyle Diamond Mine refused to participate in an SIA of the project until the company funded an SIA of the creation of Lake Argyle in the 1960s, which flooded much of their territory;
- First Nations in northern Alberta insist on considering the cumulative impact of earlier and contemporary oil sands projects on country and culture in considering each project.

Compartmentalisation

- One of the most persistent complains about proponent driven IA is that it creates silos around different sorts of impacts and fails to recognise the inter-connectedness of people, culture, and country. IIA can recognise these interrelationships, e.g. not dealing with impacts on water separately to impacts on culture, but dealing with water *as* culture and culture *as* water;
- IIA can bring Indigenous knowledge to bear in an integrated way in defining issues and impacts and in developing impact measures and avoidance and mitigation strategies;
- Browse IIA: assessment of impacts on aquifers combined bio-physical, cultural, and spiritual aspects. Affects what 'mitigation' is possible/acceptable.

Poor Engagement Methods

- Time frames often too short to allow effective engagement;
- Tendency to rely on ‘one shot’ consultations and formal, large-scale meetings;
- Heavy reliance on written information materials, often highly technical;
- Failure to tailor engagement to specific audience, e.g. women, youth, elderly;
- Result is that many people are excluded and issues and impacts are ignored.

IIA Engagement

- Careful preparation to ensure affected population fully identified;
- Longer time frames that allow multiple, ‘back and forth’ engagement;
- Wide range of engagement approaches to facilitate inclusion of diverse populations. E.g. separate men’s and women’s meetings, youth meetings, meetings on country;
- Tiered engagement, often starting small and working up to larger forums where knowledge and views shared;
- Use of appropriate communication materials, much more reliance on visual media.

Limitations affecting IIA in Australia and Canada

- No statutory requirement. Occurrence tends to mirror political and organisational capacity of individual First Peoples, It is often communities that have been and will be most impacted who miss out;
- IIA is expensive, forms of engagement IIA tends to employ are resource-intensive. Substantial internal capacity is required to establish and manage an IIA;
- Linked to these points, small number of IIAs being conducted, limits opportunities for learning and innovation;
- Small pool of people with the combination of skills required to support effective IIA;
- Timing. Benefits in having IIA follow on from completion of proponent IA studies, but often happen simultaneously because of Indigenous participation in proponent studies or/and because of project timelines.

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In Conclusion …

- IIA does not *of itself* ensure that First Peoples can influence or control decisions about proposed development on their country;
- IIA can help provide a platform from which First Peoples can push for control over decision-making, and place them in a position to *take advantage of* any changes occurring in underlying power relationships;
- IIA can generate significant benefits even where influence over project decisions are limited, e.g. by building community unity and capacity, generating information for internal planning processes;
- To realise its potential, the starting point for IIA should always be a First People's own goals and priorities, not the project being assessed.

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