Submission to Victorian Legislative Council
Environment and Planning Committee
Inquiry into Community Consultation Practices

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1. Summary

I critique aspects of the two related Engage community consultation processes used by the Victorian Department for Energy, Environment and Climate Action (DEECA)(previously DELWP) for the "Draft Brolga Assessment and Mitigation Standards" and "Managing the biodiversity impacts of renewable energy". I conclude that they illustrate significant failures in, and abuse of, the respective processes and information presentation, which should not be repeated in future consultation processes conducted by the Victorian government, government departments or Engage. Also, action should be taken to annul the results of "Managing the biodiversity impacts of renewable energy" in relation to the finalised Brolga breeding wetland buffer distance, because of the gross misrepresentation on which it is based.

I consider that in future Victorian consultation processes:

- Documents released for public comment should contain fully referenced, justified and accurate information that the public can trust. Relevant research results should be accurately presented. Arguments and proposals based on such results should be properly explained and responsibly justified.
- Departments and relevant staff should be able to be held accountable for information misrepresentation and misuse.
- Submissions should:
    - Be published soon after the time that they are received
    - Not be kept secret by the relevant department or responsible minister
    - Not be held by the department until after the consultation period is finished, and/or the relevant policy document is published, applied or relevant government decision is made.
- Criticisms by submitters of proposed actions or policies should be responded to in detail, especially where those actions/policies are integral to the overall program, policies or document being prepared for government.
- Prior to finalisation of the relevant program, policy or document, submitters should have the opportunity to critique/respond to the department's or government's response to
    - their submissions and
    - final proposed actions or policies of the department or government before they are finally accepted;

  and the proponent should publicly respond to those criticisms before applying the final policy.

2. "Draft Brolga Assessment and Mitigation Standards" (2020)

2a. The process

This Engage consultation process aimed at producing standards for buffers around breeding and flocking wetlands of the endangered Southern Brolga (*Antigone rubicunda*) potentially impacted by wind energy factories in Victoria. The new

standards were to replace the older "Interim Guidelines for the Assessment, Avoidance, Mitigation and Offsetting of Potential Wind Farm Impacts on the Victorian Brolga Population 2011".

The process began on 16 November 2020 with the release of a 'consultation draft' and other material, and the period for submissions closed on 18 December 2020. The final standards were originally planned to be published in early 2021 together with a report on responses to submissions. This publication did not happen, and the relevant Engage website was maintained with some updates about the process until late 2024.

A new process was initiated in late 2024 under the title of "Managing the biodiversity impacts of renewable energy" with the aim of producing a handbook to guide the establishment of renewable energy factories in Victoria. Some information about the initial consultation process was kept on the internet and linked to the new process.

There are two issues of concern with this initial process:

a. the failure to publish submissions, the public's inability to access them otherwise, and DELWP's weak justification for this situation;
b. DELWP's use of misleading statements about, and failure to scientifically justify, proposed buffer distances around Brolga breeding wetlands.

2b. Submission publication

The submission web page as placed on the internet for the 2020 process made it clear that submissions would be published. DELWP asked submitters for consent to publish their personal name with their submission, but it made no statement about restricting the submission publication date to a specific time (Appendices 1 & 2).

This situation continued until at least late October 2021, when Engage noted on the website that DELWP had received 60 submissions from 57 individuals and organisations, but that the timeline had been extended because of the COVID pandemic (Appendix 3).

This process was not finalised by 2022. However, in March 2022, the relevant Engage website included the statement that submissions for which the authors gave publication approval **"will be published on the Engage Victoria website when the Government implements the standards"** (Appendix 4).

Thus, sometime between 11 and 15 months after submissions closed, DELWP published a time restriction on the publication of submissions that was not stated at the time submissions were accepted. It is unknown how many people became aware of this restriction and for how long they were aware.

I did not make a submission to the Engage process, but became concerned over the availability of information about the proposed standards because of my interest in the fate of the endangered Southern Brolga and the potential impact of wind energy factories. The draft standards as released by the then Department of Environment, Land, Water and Planning (DELWP) proposed that the 'Isolated breeding wetlands' and 'Groups of suitable breeding wetlands' would require a 900 metre buffer.

In May 2022, I wrote to the then Executive Director of the DELWP Biodiversity Division, James Todd, complaining about the failure to publish the submissions and requesting their release.

Mr Todd replied justifying the process as common practice, but did not comment on my request for release of the submissions. I replied providing further criticisms of the situation, especially that it was not in the public interest and was not the practice of parliamentary inquiries, such as that conducted by the Victorian Legislative Council inquiry into ecosystem decline. Part of my criticism was based on DELWP internal documents obtained through a Freedom of Information request showing that one staffer noted the fact that the research being used by the department to justify the 900 m buffer did not do so, and that staff managing the preparation of the standards recognised the information limitation. In my reply to Mr Todd, I pointed out that there were fundamental flaws in the use of the proposed buffer of 900 metres, and that the public were not aware of this and other problems. Yet, it was he who approved the use of the 900 m buffer, and the department planned to release submissions only after the new standards were accepted by government and applied. Mr. Todd did not reply (Appendix 5).

Possibly spurred by my complaints to the Biodiversity Division, I understand that staff of the Division emailed all 57 submitters to the 2020 process seeking their approval to publish their submission before finalisation of the standards, but only received approval from 22. The reasons that approvals were not provided by others is unknown to me. Possible reasons include failure to receive DEECA's communication. DEECA did not release these 22 submissions despite the submitters' approval (Appendix 6).

In June 2024, DEECA recommended to the then Minister for the Environment, Steve Dimopoulos MP, that he approve the release of submissions from the 2020 consultation process in order to **"provide context for the options proposed for the Brolga guidance"**, the discussion paper/draft handbook for which was planned for release in late-2024. The minister rejected the recommendation and did not approve release (Appendix 7).

Thus, no submission to the 2020 consultation was published either before or after the publication of the draft and final handbook for managing the biodiversity impacts of renewable energy, released respectively in 2024 and 2025. I understand that the buffer standards released in the 2025 Handbook can now be applied to wind energy production applications received after the Handbook's publication.

It appears from viewing the "Draft Brolga Assessment and Mitigation Standards" website that the submissions to the 2020 consultation remain secret, even though at least some submitters agreed to, and no doubt expected, publication of their submission. DELWP stated that submissions **"will be published on the Engage Victoria website when the Government implements the standards".**

On 11 June this year I wrote to DEECA's 'Renewables Biodiversity' team asking: '*Please tell me where the submissions made to the 2020 Engage consultation on "Draft Brolga Assessment and Mitigation Standards" are published. Engage/DEECA promised to publish them.*' I am waiting for a reply.

2c. Lack of justification for proposed Brolga breeding wetland buffer
All the submitters' attitudes to the proposed 2020 standards are not available for scrutiny, so their criticisms of DEECA's proposals cannot be analysed. The importance of this is shown in the comments by Bird Life Australia (BLA) to that Engage consultation, which the organisation provided to me. It contains strong criticisms of the proposed buffer distance for Brolga breeding wetlands (Appendix 8). BLA's comments support an argument that DEECA ignored the fact that there is no published scientific research justifying its proposed 900 metre buffer.

By keeping this submission secret, DEECA and its minister prevented the interested public from learning of BLA's substantial criticism, and all others, of the 2020 proposed standards. Such knowledge could have influenced the content of submissions to the 2025 Engage consultation process 'Managing the biodiversity impacts of renewable energy' and the 2024 draft Handbook and the 2025 final Handbook. The deliberate long-term secrecy applied to submissions does not serve the general public or the endangered Southern Brolga: it serves to protect those political and economic interests that support wind energy expansion in western Victoria over the future of the endangered Southern Brolga.

3. "Managing the biodiversity impacts of renewable energy" (2024-25)

3a. The process
The objective of this Engage process was to allow public consultation on the production of a handbook to guide the renewable energy industry in relation to future environmental impacts. The process began on 13 December 2024 despite plans and published statements that it would begin earlier; it began with the release of a discussion paper and draft handbook for comment. It closed on 23 February 2025 after an extension to the comment period.

Within this 2+ month period DEECA held workshops with specific 'stakeholder' groups. It also published supporting documents, some of which had not been published by the beginning of the submission period and so were not publicly available for the whole of this period. I was not able to read some of them when preparing my submission (Appendix 9).

3b. Submission publication and DEECA response
Submissions to this process were not published as received by Engage/DEECA; they were published with the release of the final handbook. Thus, they were not available during the submission period for public use.

I provided my submission to Engage/DEECA in January 2025. I focussed on the matters relating to the impacts of wind farms on the endangered Southern Brolga. In particular, I was concerned with DEECA's proposal for a narrow 900 metre buffer for Brolga breeding wetlands and its misleading justification for this distance. See some of my comments in section 3c below. This 900 metre buffer was maintained in the final handbook.

DEECA produced and published in May 2025 a "Public consultation summary report" containing its responses to, and any actions taken in response to, submission comments. I have not read all submissions to this process. However, I consider that

the extreme superficiality of DEECA's representation of, and response to, logical and detailed criticisms such as mine to the proposed buffer distance is grossly irresponsible. DEECA does not comment on specific criticisms of their presentation of information and arguments about its proposed Brolga breeding wetland buffer distance of 900 metres. This is seen in direct quotes taken from the summary report.

In relation to public comments on the buffer distance, DEECA states in its "Public consultation summary report":

> *"Brolga Guidance General support for a new approach to replace the outdated Interim Brolga Guidelines from 2011, but further clarity required on specific components of guidance. Some did not support proposed approach to buffers." (Page 6)*
>
> *"Some concerns were raised that the proposed buffers to known breeding wetlands were too small and that the cumulative impacts of disturbance and displacement were not considered in the development of the guidance. Concerns were also raised about the supporting data and scientific justification of the proposed buffer distances." (Page 12)*
>
> *"The Brolga area of interest, assessment area size, flocking areas and breeding wetland buffer distances have all been retained." (Page 17)*
>
> *"The development of the Brolga guidance is supported by years of research, monitoring and reporting, data collection and consultation. DEECA has drafted the guidance based on the best available science and data to ensure that key Brolga habitat is protected." (Page 17)*

It is clear from these statements that DEECA did not want to, or could not, make detailed logical responses to specific criticisms of their promotion of narrow buffers of 900 metres around Brolga breeding wetlands. The department merely made bland, superficial comments that avoided having to deal with the substantive criticism that there is no scientific justification for such a buffer distance. It did not provide the results from, or the titles of, the published and unpublished reports describing the "research, monitoring and reporting, data collection and consultation" or the "best available science and data" in its "Public consultation summary report". No list of substantial references on these matters was published in either the Discussion Paper released in December 2024 or the Handbook released in May 2025.

Thus, the public has no idea how DEECA staff specifically considered criticisms of one of the most important issues related to the biodiversity impacts of wind or other renewable energy expansion in western Victoria - the Brolga breeding wetland buffer distance. However, we do know that DEECA responded by not changing the 900 meter buffer distance.

<u>3c. Lack of justification for proposed Brolga breeding wetland buffer</u>

In the Discussion Paper released in December 2024 and/or the Handbook or "Public consultation summary report" released in May 2025, DEECA could have referred to all the reports describing the supposed "research, monitoring and reporting, data collection and consultation" or the "best available science and data" showing that the

900 metre buffer around wetlands was going to ensure the protection of breeding Brolgas and their chicks. But it did not.

The 2024 Discussion Paper only relied on one reference by Inka Veltheim with other authors published in 2019. DEECA said on page 27:

> "This buffer option is justified by Veltheim et al. (2019) and protects all known breeding sites and nearby wetlands and habitat that are likely to be used for roosting, foraging and movement."

The 2024 Discussion Paper does not contain the full citation, but "Veltheim et al. (2019)" would be the journal paper "Breeding home range movements of pre-fledged brolga chicks, *Antigone rubicunda (Gruidae)* in Victoria, Australia - Implications for wind farm planning and conservation" published in Global Ecology and Conservation, Vol 20, 2019, https://doi.org/10.1016/j.gecco.2019.e00703.

In Section 2 of my submission on the 2024 Discussion Paper ("The proposed buffer around nesting sites is unjustified" (Appendix 9, pages 5 - 7)), I comment specifically on DEECA's use of Inka Veltheim's work.

Using FOI-supplied information, I showed that one DEECA staffer pointed out to DEECA's Biodiversity Division staff preparing the draft brolga standards that Veltheim's work **"does not tell us anything about Brolgas' avoidance of wind farm infrastructure in choosing nesting sites"**. The Division staff response was dismissive: **"No change to standards ……. With respect to expanding to consider potential disturbance from turbine operation in selecting breeding wetlands, this is a current data limitation."**

Thus, DEECA staff understood that Veltheim's research should not be relied on as scientific work to justify a 900 metre buffer or any buffer distance - because it was not conducted near operating wind farms.

Amongst other information, I also quoted the submission from Bird Life Australia (BLA) to the 2020 Review of Draft Brolga Assessment and Mitigation Standards, which criticised the 900 metre buffer. BLA refers specifically to Veltheim et al. (2019), and using an extract from that paper, and points out that Veltheim et al. warn against using their work to justify particular buffer distances:

> **"Veltheim et al (2019) clearly state that further studies, particularly of the movements of breeding adults are required to inform buffer sizes. They advise against setting buffers for breeding sites based on the results of their study, given its focus on the movement of pre-fledged chicks.**
>
> > **This study was limited to pre-fledged chick movements at breeding sites. We recognise that breeding adults may range further to forage during nest building, incubation and chick rearing. Studies focusing on GPS telemetry of breeding adult pairs are recommended, to identify if larger buffers are required to avoid potential disturbance and mortality effects from turbines during the entire breeding season from nest building and incubation, to chick fledging. Further GPS tracking studies at wind farms pre- and post-operation are warranted."**

Yet, even though DEECA staff would have read both Veltheim et al.'s journal paper and the BLA submission, contrary to Veltheim's advice, the department used Veltheim et al. to justify the 900 metre buffer distance in the 2024 Discussion Paper (page 27):

> **"This buffer option is justified by Veltheim et al. (2019) and protects all known breeding sites and nearby wetlands and habitat that are likely to be used for roosting, foraging and movement".**

As I state in my submission to the 2024-25 Engage consultation: "*DEECA staff know that there is no evidence for this statement: I consider it to be dishonest."* Thus, I consider the DEECA statement illustrates gross negligence in a public consultation process.

DEECA responses to two FOI requests that I made in the last five years could not provide me with basic information to show that adult Brolgas will consistently and in large numbers nest and stay near operating wind farms to raise chicks. On this basis, I conclude that DEECA does not have sufficient basic data to show that large numbers of Brolgas will successfully raise chicks within 900 metres of operating wind farms. DEECA should not have put this distance forward in a public consultation process as being scientifically based and reliable.

However, in the 2025 "Public consultation summary report", the department ignores these issues making unreferenced claims about the quality of the research on which the 900 metre buffer is supposedly based. The final version of the '**Handbook for the development of renewable energy in Victoria**' was released in May and its page 38 contains the requirement for 900 metre buffers for Brolga breeding wetlands or potential wetlands within a 2 km home range. This requirement is now applicable to future applications for wind energy factories in Victoria. It has no published scientific basis.

4. Conclusion

I conclude that the two DEECA Engage processes "Draft Brolga Assessment and Mitigation Standards" and "Managing the biodiversity impacts of renewable energy" were seriously and irresponsibly flawed in several ways to the detriment of the Victorian public and the biodiversity DEECA is supposed to protect.

DEECA and the state government tightly controlled the process of information release at the expense of the Victorian public. DEECA and the Minister for the Environment hid submissions from the public during the respective processes. People had no chance to react to other submissions or DEECA's attitude to submissions.

Published arguments used by DEECA to justify the Handbook's buffer distance for Brolga breeding wetlands of 900 metres had no published scientific basis, and the research results published by Veltheim et al. (2019) were grossly, and it appears knowingly, misused and misrepresented by DEECA in the respective consultation papers. The "Public consultation summary report" released in May 2025 superficially dismisses reasonable criticisms of DEECA's arguments about the buffer distance. The public cannot learn DEECA's detailed reasoning underlying these dismissals.

The Victorian public has not been served by DEECA's two Engage processes that produced the '**Handbook for the development of renewable energy in Victoria**'. I conclude that the requirements of the handbook for Brolga breeding wetland buffers will be applied at the expense of the endangered Southern Brolga. The Victorian government should not apply the Handbook.

The Victorian government should take strong and immediate action to prevent the repeat of the serious failures of these two consultation processes, as described by this submission.

I consider that in future Victorian consultation processes:

- Documents released for public comment should contain fully referenced, justified and accurate information that the public can trust. Relevant research results should be accurately presented. Arguments and proposals based on such results should be properly explained and responsibly justified.
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  and the proponent should publicly respond to those criticisms before applying the final policy.

5. List of Appendices

1. Copy of Engage Draft Brolga Assessment and Mitigation Standards Website 16 November 2020 (obtained via 'Wayback Machine')
2. Copy of Engage Draft Brolga Assessment and Mitigation Standards Website 4 December 2020 (obtained via 'Wayback Machine')
3. Copy of Engage Draft Brolga Assessment and Mitigation Standards 23 October 2021 (obtained via 'Wayback Machine')
4. Copy of Engage Draft Brolga Assessment and Mitigation Standards 16 March 2022 (obtained via 'Wayback Machine')
5. Email exchange between Ian Penna and James Todd of DEECA (2022)
6. Extract from FOI request 6051 1 Documents for Release – Part 1
7. Extract from FOI request 6051 4 Documents for Release – Part 2
8. Bird Life Australia's comments on DELWP Draft Brolga Standards (2021)
9. Ian Penna's submission to Engage process on 'Handbook for the development of renewable energy in Victoria' (2025)

END