
Environment-Related Advisory Committees

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Pilot report on dimensions of diversity
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Contribution statement

Each listed author has made a significant intellectual contribution to the work, as follows: *Rebecca Nelson*¹, conception and design, data acquisition, data analysis and interpretation, report drafting; *José Manuel Cortes Leighton*¹, data acquisition, data analysis, report drafting; *Rod Marsh*², conception and design, contribution of knowledge, report review.

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Watertrust Australia acknowledges the Traditional Owners of land, sea and waters across Australia and their continuing connection to culture and Country. We pay our respects to Elders past and present.

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Key Findings: Dimensions of Diversity

This preliminary research examined advisory committee arrangements established by statute in Victoria and the Northern Territory across **diverse environment-related contexts**: catchment management, water quantity regulation, land use planning, species protections, marine and coastal regulation, urban water, interjurisdictional water management, mining, climate change, protected conservation areas, pollution, and game management. These were selected as contexts that were likely to produce controversies in which the public might be expected to be interested and seek a voice, or in which special expertise may be sought. To complement these jurisdictions and contexts, which were themselves chosen for their diversity, we included the advisory committees associated with the Great Barrier Reef Marine Park Authority (GBRMPA, including those not established under statutory provisions) to increase the range of interjurisdictional contexts and to represent a highly sophisticated set of advisory arrangements.

Importantly, this research has not taken a comprehensive view of advisory committees in the areas described above. Rather, it has intentionally sampled statutory provisions, seeking to uncover diversity in arrangements. A list of legislation review is presented at the end of this report. We also make brief reference to advisory committee arrangements used in the Western United States, which reveal further diversity in possible arrangements.

Note that we have not reviewed how often statutory structures for advisory committees are actually used, as distinct from being introduced into legislation. Sometimes a law requires a committee to be established; in other cases, establishing a committee is discretionary. Some are intended to be enduring, whereas others are intended to operate for only short periods, as needed. We hypothesize that some structures for discretionary advisory committees are rarely used, if ever, or may have fallen into disuse over time.

How are advisory committees established?

A large majority of the committee structures we reviewed involved a Minister simply appointing members.

Some unusual arrangements involved:

- a member appointed by a private body (the President of the Australian Property Institute, in the case of an independent expert appointed under a Victorian mining law);
- members appointed by an intergovernmental group (a committee under the Lake Eyre Basin Intergovernmental Agreement); and
- members specified in legislation by reference to positions in public agencies (some members of the NT's Planning Commission).

We did not find any case of members of an advisory committee being selected by election (as is common in the western U.S.).

Who sits on advisory committees?

As a matter of law, rather than practice (which is difficult to gauge given the relatively low levels of transparency about advisory committees: see below), advisory committees tend to fall into four categories in terms of composition, being those that are composed of:

- stakeholder members appointed because they represent particular interest groups;
- skills- or expertise-based members;
- a combination of both stakeholders and skills- or expertise-based members; or
- members drawn from government entities plus one or more of the categories above.

It seems striking that in issue areas that are often socially controversial, expertise requirements typically relate to ‘hard’ sciences and public management, with broader social science expertise rarely expressly desirable (the Great Barrier Reef Marine Park Authority’s membership requirements being an exception). This raises the issue of whether the skills that a statute states as required for an advisory committee have, in some situations, remained ‘frozen in time’ after the introduction of a statute, even though the nature of the controversies or the importance of stakeholder engagement has changed. An outlier in terms of skills that are specified to be required is an advisory committee under Victoria’s draft Animal Care and Protection Bill, which specifies expertise in ethical standards and conduct as expressly relevant.

Some stakeholder advisory groups are required to have a majority of members representing a particular interest group (e.g. some committees under Victorian water-related legislation are required to have a majority of members representing agriculture or be owners or occupiers of land in the local area). A large number of committee arrangements reviewed did not specify any requirement for skills, expertise, or stakeholder characteristics for the committee’s members. We found no express requirement for University representation, unlike some water-related arrangements in the western U.S.

Why are structures for advisory committees established?

We reviewed statements made as part of Ministerial second reading speeches when statutory provisions for advisory committees were introduced to gain a general sense for the context of their introduction and the needs that they were established to meet. Some of the rationales uncovered were:

- to maximise local involvement in a ministerially sanctioned solution, rather than a solution that was ‘centrally imposed’ (consultative committees for water supply protection areas in Victoria);
- to give a voice to a natural entity (Birrarung Council, Victoria);
- to facilitate partnerships between multiple levels of government (e.g. Planning Application Committee, Victoria) or between government and a non-government body in a way that is ‘inclusive, transparent and equitable’ (NT joint management of parks and reserves);
- to ensure the policy that is the subject of the advice is ‘robust and credible’ (Independent Expert Panel on Interim Emissions Reduction Targets for Victoria);
- to ensure ‘balanced advice on the development and administration of policies’ (Water Advisory Committees, NT); and
- to provide a review mechanism that is ‘not unduly complex and expensive for citizens’ (Water Resources Review Panel, NT).

Advisory committees that are initially established as creatures of policy may later take statutory form. For example, Victoria’s current Animal Welfare Advisory Committee is non-statutory, but a recent exposure draft bill (Animal Care and Protection Bill) would replace it with a statutory committee. Federal-state relations can also influence the establishment of committees; we understand (anecdotally) that multiple states appear to have established statutory animal welfare-related committees in response to a perceived lack of Commonwealth leadership on the issue, and Commonwealth de-funding of pre-existing Commonwealth committees and strategies.

What are the functions of advisory committees?

The advisory committees we reviewed had one or more of a **variety of functions**:

- **Directly formulating large-scale overarching strategies** (e.g. boards of Victorian catchment management authorities) or local-scale management plans (e.g. consultative committees for management plans for Victorian water supply protection areas) to be adopted by a Minister;

- **Advising the Minister on formulating or reviewing an overarching strategy** (e.g. consultative committees for Victorian sustainable water strategies or long-term water resource assessment) or other mechanism (e.g. Victorian interim emissions reduction target) or evaluating the effectiveness of a local plan (e.g. Water Advisory Committees in the NT);

NB: the distinction between formulating a strategy and guiding it is significant and was the basis for a change to Victoria's Marine and Coastal Council to move from a formulating role to a guiding role.

- **Advising in relation to an application for an individual authorisation:**
 - in a direct way (e.g. committee to advise the Controller on drilling licences in the NT; Planning Application Committee to advise the Victorian Planning Minister on a planning permit application); and
 - indirectly, by giving advice based on public submissions in relation to the application (e.g. different panels to consider submissions re a Victorian bulk entitlement to water, allocations to environmental entitlements, licences to take and use water (used for groundwater), construct works for water; a planning panel holding a hearing to consider an amendment to a Victorian planning scheme);
- **Advising on the appointment of a person to a position** (e.g. a panel to advise on appointing environmental auditors for the Victorian Environment Protection Authority);
- **Advising on the designation of a thing to be protected** (e.g. Scientific Advisory Committee advising Minister on listing threatened taxa in Victoria; GBRMPA advising the Minister on areas that should be declared parts of the Marine Park);
- **Scrutinising actions of government entities** and providing associated advice or recommendations:
 - in general (eg Birrarung Council); or
 - in relation to a particular decision, triggered by a person's application for review (e.g. Review Panel under the NT's *Water Act 1992*, review panel under the NT's *Mining Management Act 2001*)
- Undertaking a function delegated to the committee by a Minister or other government entity (e.g. Planning Application Committee in under Victoria's land use planning legislation);
- Providing advice to a Minister or other government body on matters that are unspecified in the statute. This may be expressed as, e.g. 'any matter relating to this act' or 'any matter referred by the Minister' or 'assist [x] in the performance of its functions'.

How much power do advisory committees have?

Many advisory committees are weak in terms of formal power. We see this in a variety of ways, e.g. recommendations or advice not binding the decision-maker who requests it (though there may be a mandate to consider it), low or no barriers to a member being removed by the relevant Minister, a requirement that a committee undertake its functions in accordance with the directions of a Minister.

However, some bodies that have advisory functions also have significant decision-making functions: there is a continuum from 'pure advisor' to 'decision-maker'. Bodies that undertake both advisory and decision-making functions include the Vic-SA Groundwater Border Agreement Review Committee; Victoria's Essential Services Commission; Victoria's Game Management Authority; the NT's Utilities Commission; partnership arrangements that give traditional Aboriginal owners of a park or reserve significant decision-making power in management, jointly with the NT government; the GBRMPA.

How transparent are advisory committee arrangements?

The transparency of advisory committee arrangements varies widely. Transparency may be considered in terms of availability of information about the establishment of a committee in the first place, appointment

processes, and operational transparency (e.g. published terms of reference; minutes made publicly available or meetings themselves made open to the public; requirements relating to disclosing conflicts of interest).

Focusing on operational transparency, some points along the spectrum from least to most transparent are:

- General ministerial advisory committees, to be appointed ad hoc – these often have no statutory arrangements in terms of procedure or publication of information;
- Groundwater (Border Agreement) Review Committee: requires meeting minutes, annual report on activities, gazettal of various declarations;
- Game Management Authority: statutory conditions of appointment; requires meeting minutes; requires declaration of competing interests; must consider the ‘principle of transparency, which means that members of the public should have access to reliable and relevant information in appropriate forms to facilitate a good understanding of game management issues and the process by which decisions in relation to game management are made’ (s8A, *Game Management Authority Act 2014* (Vic)); and
- Planning Panels in Victoria: terms of reference, requirement to conduct hearings publicly and comply with special procedures for these hearings, planning panel’s report on recommendations must be made public.

While greater requirements for transparency tend to be associated with entities that have both advisory and decision-making power, there are also examples of purely advisory bodies having detailed transparency requirements (e.g. GBRMPA’s Reef Advisory Committees).

Relationships between committees or levels of government through committees

Governance of an issue area may involve **multiple advisory committees that are linked in different ways**. This sometimes takes the form of **vertical nesting**, e.g. where a formally constituted ‘high-level’ entity (like the Great Barrier Reef Marine Park Authority, ‘GBRMPA’, which has both advisory and decision-making functions) itself creates other advisory committees with differing degrees of formality and for different purposes (e.g. GBRMPA’s Reef Advisory Committees and local marine advisory committees, both established outside a statutory structure).

Even if they are not part of vertically nested advisory structures, a committee may be tasked expressly with providing **advice on intergovernmental arrangements** (e.g. GBRMPA is to advise on flows of money between Queensland and the Commonwealth GBRMPA, and in general on agreements between the two governments relating to the Marine Park). Alternatively, a committee may **advise two governments on a joint plan** (e.g. Independent Expert Panel and Reef 2050 Advisory Committee advise both the Queensland and Commonwealth Governments on the implementation of joint arrangements under strategic plans produced pursuant to a strategic environmental assessment for the Reef under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)).

There are also examples of **multiple, horizontally unlinked committees** that deal with connected subject matters. Victoria provides for the establishment of many different advisory committees to advise on different documents and strategies under a single piece of legislation (the *Water Act 1989*). This raises questions about the relative advantages and disadvantages of an advisory committee having a narrow focus versus an ability to take a ‘bird’s eye view’ of issues beyond one strategy.

At the other end of this spectrum are **single committees that advise on a broad range of matters**. The Victorian Marine and Coastal Council advises the Minister on a wide range of specified matters, including strategies, scientific research, partnerships, environmental management plans, and ‘significant decisions’ under the *Marine and Coastal Act 2018* (Vic). The NT Planning Commission has a similarly broad range of functions.

In an outlier arrangement, multiple committees with different memberships may even advise on a single document (e.g. a consultative committee and different panel to advise on a Victorian sustainable water strategy).

Potential future research

This pilot research suggests that there is not only an enormous number, but an enormous variety of advisory committee structures used in environment-related matters—likely too many to cover comprehensively in anything other than a large-scale project. Future research should therefore have a narrowed scope.

Several issues emerge as potentially promising for future research:

- A focus on advisory committees in the intergovernmental context (multiple states, or multiple states and the Commonwealth);
- A focus on advisory committees that are intended to focus on local community engagement in larger-scale policy contexts;
- Given the complexity of some of the arrangements that involve multiple advisory committees dealing with one issue area, deeper-dive case studies;
- Empirical research on the degree to which advisory committee structures fulfil the needs for which they were established; and
- Research that would lead to policy guidance on options for structuring advisory committees, with suggestions about structures that are designed to serve distinct purposes.

There is also significant potential to undertake comparative work in other jurisdictions to identify further diversity in advisory arrangements. The Commonwealth level presents this possibility, since we hypothesise that its 'distance' from local communities and resources may cause it to use different sorts of advisory structures than we see at the state level to enhance its legitimacy.

Western U.S. jurisdictions are additional key candidates for this comparative work. Based on our past work, some elements of advisory and related governance arrangements that we expect to have developed in different ways in the western U.S. include:

- Different functions performed by advisory committees that have different membership than is common in Australia, e.g.:
 - technical committees that combine representatives from multiple governments (including tribal governments) and non-governmental organisations that meet frequently as part of relicensing process for federal hydropower projects;
 - advisory boards that must provide written recommendations before a state agency changes any rules that might affect a local area (groundwater management districts in Colorado); and
 - committees that include a greater mix of members, for example including the following members within a single committee: representatives across state and federal agencies, universities, local government, and a range of interest groups (agricultural, industrial, environmental, and development), in the case of Montana's ground water assessment steering committee;
- Different approaches to recruiting members of advisory committees, including local elections;
- Diverse examples of advisory committees that combine different levels of government in dealing with intra- and inter-state water resources;
- Methods of supporting stakeholder advisory committees to participate meaningfully in dealing with technically complex materials, e.g. including through 'best management practices' and formal guidance on engaging with tribal governments, undertaking stakeholder communication, and developing hydrogeological conceptual models (required by regulations) associated with California's groundwater sustainability plans; and
- Methods of enhancing the representation of local issues in the decision-making of higher-level governments, e.g. commonly providing for local residents or groups of water rights holders to petition to trigger processes of imposing tighter controls on groundwater withdrawals.

List of legislation reviewed

Victoria

Catchment and Land Protection Act 1994 (Vic)
Climate Change Act 2017 (Vic)
Environmental Effects Act 1978 (Vic)
Environment Protection Act 2017 (Vic)
Essential Services Commission Act 2001 (Vic)
Flora and Fauna Guarantee Act 1988 (Vic)
Game Management Authority Act 2014 (Vic)
Groundwater (Border Agreement) Act 1985 (Vic)
Marine and Coastal Act 2018 (Vic)
Mineral Resources (Sustainable Development) Act 1990 (Vic)
Planning and Environment Act 1987 (Vic)
Water Act 1989 (Vic)
Water Industry Act 1994 (Vic)
Yarra River Protection (Wilip gin Birrarung murron) Act 2017 (Vic)

Northern Territory

Environmental Protection Act 2019 (NT)
Lake Eyre Basin Intergovernmental Agreement Act 2009 (NT)
Mining Management Act 2001 (NT)
National Environment Protection Council Act 1994 (NT)
Planning Act 1999 (NT)
Power and Water Corporation Act 1987 (NT)
Territory Parks and Wildlife Conservation Act 1976 (NT)
Utilities Commission Act 2000 (NT)
Waste Management and Pollution Control Act 1998 (NT)
Water Act 1992 (NT)
Water Supply and Sewerage Services Act 2000 (NT)

Other

Great Barrier Reef Marine Park Act 1975 (Cth)



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