# Planning Panels Victoria: Maximising your impact during exhibition and hearings

Major Infrastructure Projects and Environment Effects Statements

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# About me



- Barrister since May 2018
- Over 20 years' experience:
  - planning, environment, heritage
  - public law – statutory interpretation, judicial review
  - Indigenous law – AH Act, CHMPs, intangible cultural heritage, native title and traditional owner settlement, treaty law
  - land acquisition, compensation and valuation
  - intellectual property, technology, telecommunications, confidential information and privacy
- Solicitor:
  - Private practice – boutique and top tier
  - Department of Planning and Community Development
- Associate
  - Chief Justice Young, Supreme Court of NSW

## Major infrastructure & mining focus

- Acting for proponents, major corporate submitters and the EPA in Inquiry and Advisory Committees (IAC) and Standing Advisory Committees (SAC):
  - Mordialloc Bypass Project – 2019
  - Fingerboards Mineral Sands – 2021
  - Viva Energy Gas Terminal – 2022
  - Goschen Mineral Sands – 2024
  - Marinus Link – 2024
  - Viva Energy Supplementary – 2024-2025
  - SRL 2025 – 2026
- Focus of this presentation is on major infrastructure & mining projects - adaptable to other contexts and hearing types

# Overview

## 1: Legislation and process

- Environment Effects Act 1978 (Vic)
- Environment Protection and Biodiversity Act 1999 (Cth)
- Planning and Environment Act 1987 (Vic)
- Trends – Planning Panels Victoria (PPV) slides 9-16 courtesy of Sarah Carlisle, Chief Panel Member (6 Aug 2026)

## 2: Maximising your impact

- Submissions to exhibition
- Evidence / Cross-examination
- Hearing submissions – written & oral
- Without prejudice drafting

## 3: Legislative reform

- EPBC Act Reforms
- PE Act Reforms
- 2026 State election

# Part 1: Overview of legislation and process



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# Environment Effects Act 1978 (Vic)

**1**

## Referral

Proponent, decision-maker or the Minister refers project to the Minister for Planning (DTP)

Must refer where potential for a significant effect on the environment (Table 1, Ministerial Guidelines)

**2**

## Is an EES required?

Minister determines whether EES is required

For projects where no EES required, may condition an Environment Report (ER)

**3**

## Scoping requirements

Minister finalises scoping requirements, based on draft materials prepared by Proponent that were exhibited for public comment

TRG convened

**4**

## Preparation and exhibition

Proponent prepares EES

Undertakes public exhibition

Typically comprises:

1. EES Chapters
2. Technical Reports
3. Appendices: maps, draft PSA

**5**

## Inquiry and report

Inquiry and Advisory Committee Terms of Reference (ToR)
3 key stages:

1. Submissions to exhibition
2. Hearing – further submissions and evidence
3. Report prepared

**6**

## Minister's assessment

Minister's assessment:

1. Must be considered by other relevant statutory decision makers
2. Statutory approvals on hold until this occurs (some exceptions)

# Environment Protection and Biodiversity Conservation Act 1999 (Cth)

**1**

## Referral

Project referred under the EPBC Act to the Minister (DCCEEW)

**2**

## Determines whether controlled action

If Minister decides the project is a controlled action, an assessment must occur

**3**

## Bilateral assessment process

If the bilateral assessment process applies, the identified matters of national significance will be considered and reported on by PPV

- Viva Energy
- Vopak

**4**

## Outside Victoria?

If project not wholly within Victoria, bilateral agreement cannot apply

- Marinus Link
- Star of the South

**5**

## Ministerial approval or refusal

Minister decides whether to grant approvals under the EPBC Act

**6**

## EPBC Act reforms

EPBC Act going through significant reforms

Check for new bilateral agreement

# Planning and Environment Act 1987 (Vic)
# Panels and Advisory Committees

**1**

## PE Act: PPV

Part 7: Advisory Committees
Part 8: Panels

Bound by natural justice requirements – but this is changing!

Not bound by rules of evidence – may inform itself as it sees fit

**2**

## Receives written submissions

Written submissions in response to exhibition received

Submitters indicate whether they wish to be heard at the hearing

**3**

## Directions Hearing

Addresses:

1. Preliminary / Procedural matters

2. Hearing arrangements

**4**

## Evidence & Additional information

Expert reports filed by Proponent

Expert reports filed by submitters

Part A submissions

Technical Notes and responses to RFI (continue into hearing)

**5**

## Hearing

1. Opening submission
2. Evidence, cross-examination
3. Parties submission
4. Closing submission
5. Without prejudice drafting

**6**

## Report

Committee reports to the Minister:

1. Effects cannot be managed
2. Supplementary EES
3. Effects can be managed

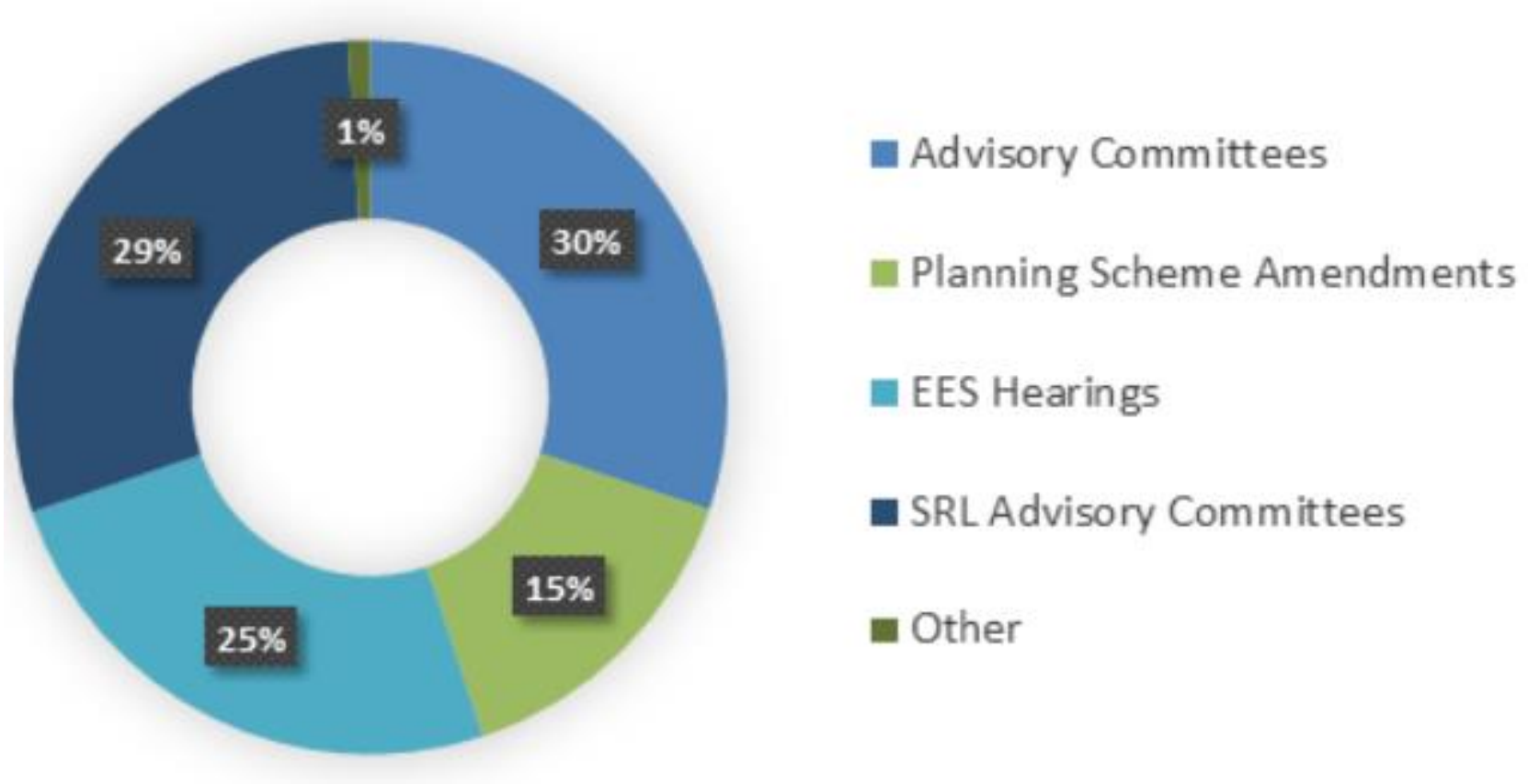
Findings and recommend-ations



# Trends

Slides 9-16 courtesy of
Sarah Carlisle
Chief Panel Member

# Workload distribution




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# Trends - Reports in 2025-26

37

Panel Reports (planning scheme amendments)

1

Suburban Rail Loop East Precincts Standing Advisory Committee Report in 9 volumes

6

VPA Projects Standing Advisory Committee Reports



5

Priority Projects Standing Advisory Committee Reports

3

Environment Effects Statement Reports

2

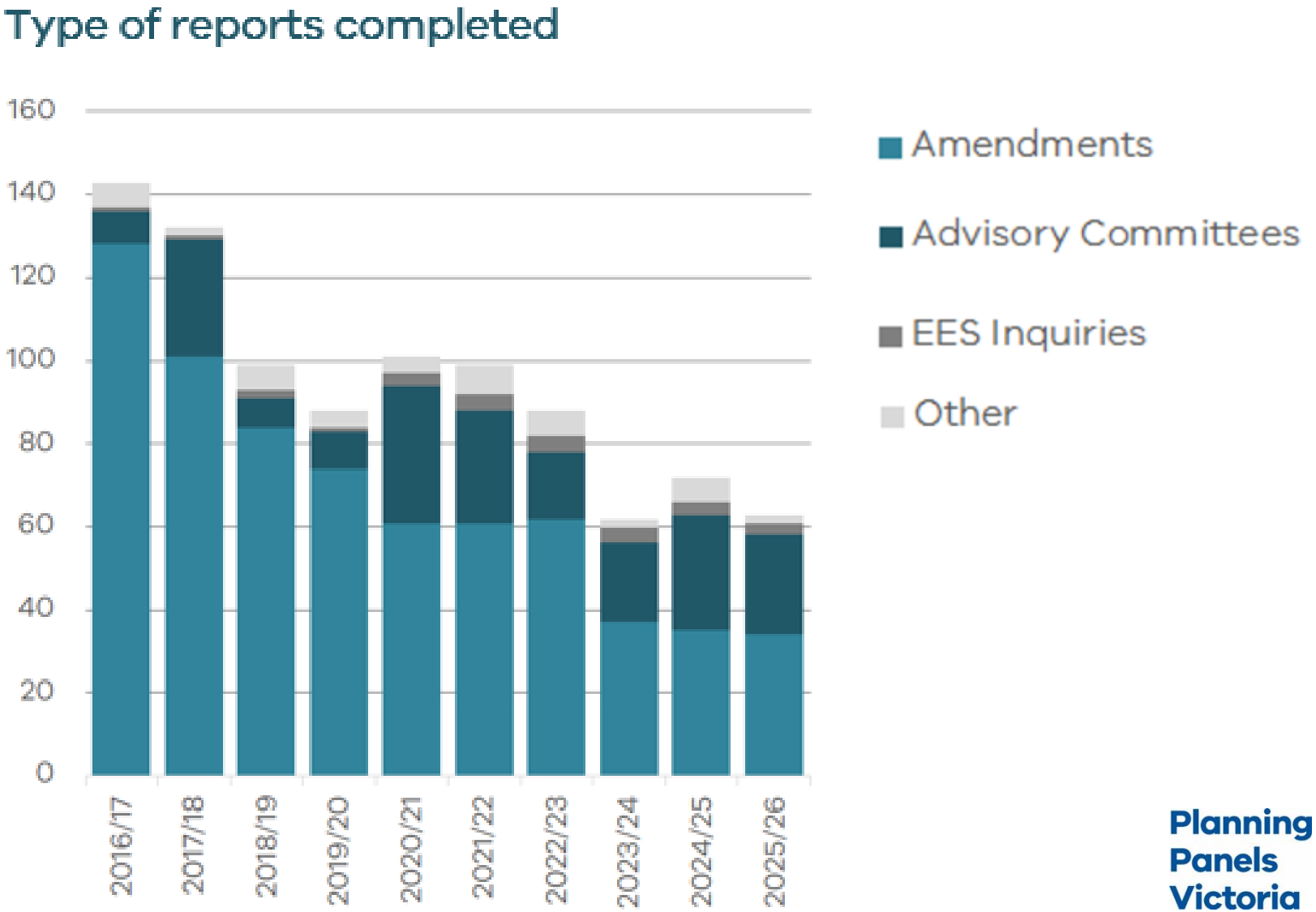
Single purpose Advisory Committee Reports

1

Yarra Activity Centres Standing Advisory Committee Report

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# Changing focus




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# Trends – Metro vs Rural/Regional Matters



34

**Metropolitan matters**

24% decrease from 45 metro matters in FY 2024-25



29

**Regional and Rural matters**

7% increase from 27 rural and regional matters in FY 2024-25

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# Trends – Submissions and tabled docs



2706

Submissions considered

51% decrease from 5573 submissions were considered in FY 2024-25



5216

Tabled documents

34% increase from 3424 tabled documents in FY 2024-25

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# Format of hearings

Referred matters
- Advisory Committees often appointed to give advice on specific matters
- Often suitable for themed hearings

Roundtable format
- May be dictated by ToR
- Seen as a more facilitatative process
- PPV currently reviewing pros and cons (including role of advocates and experts)

Tighter timeframes
- ToR imposing tighter reporting timeframes
- On complicated matters this can be challenging

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# What is keeping us on our toes?

Structure planning
- New VPP tools + mechanisms
- Heavy focus on activity centres and precinct planning
- Often with specific referred matter focus
- Infrastructure delivery and funding mechanisms

EES / infrastructure projects
- Impacts on agricultural land
- Energy security
- Traditional Owner engagement
- Marine / offshore projects
- Coordination with Commonwealth

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# Part 2:
# Maximising your impact




Photo: Kaboompics

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## Submissions to exhibition

- Must relate to the Terms of Reference (ToR)
- Explain:
  - who / what / where you are
  - how you will be affected
- Be clear about what you don't support, and why
- Identify the recommendations and changes you want the Committee / experts / Proponent to make
  - What mitigation should be required?
  - What conditions should be imposed?
  - What changes to the project design, equipment or operations are necessary?
  - What specific amendments to Project Documentation or draft PSA are required / why?
- If the information within the EES is incorrect or unreliable, explain how and why that matters
- Identify any unacceptable significant environmental impacts

## Terms of Reference (ToR) and Scoping Requirements

- Before drafting your submission read the ToR and Scoping Requirements
- Only submissions, evidence and cross-examination that relate to the matters identified in the ToR are relevant
- The ToR set out what the Committee must (and in some cases must not) consider and report upon
- The Scoping Requirements set out what the EES must report on (ie what must be investigated and documented in the EES)
- Tiered assessment – since 2023, the Ministerial Guidelines (s10 EE Act) have explicitly referred to the "tiered approach" to assessment under the EE Act
- Recent trend – ToR and / or Scoping Requirements identifying:
  - Key matters – potentially significant environmental effects - the focus of the hearing or submitter conference – may be broken into "high or medium priority"
  - Other matters – less likely to have significant environmental effects – dealt with on the papers or allocated less time during a hearing or submitter conference

## Recent examples: Terms of Reference, and Scoping Requirements

**Vopak (gas imports, FSRU) – Scoping Requirements**

Table 1 - Investigation themes, potentially significant effects and key statutory decision-making known for the project

- High priority
- Medium priority
- Other matters

**Warracknabeal Energy Park (onshore wind) – ToR**

- Inquiry to focus on “key matters” (cl 5)
- Inquiry may direct “other matters” not be discussed at hearing or only dealt with on the papers (cl 27)

**Star of the South (offshore wind) - ToR**

- Key Victorian Matters – considered via submitter conference (cl 24-36)
- Other Victorian Matters – written submission only (cl 37-39)

## Directions Hearing

1. Indicative dates often distributed prior – duration, order of submissions, order of expert witnesses
2. Site visit – identify any sites the IAC should visit, be ready to explain why
3. Resolve any timetabling issues
4. Confirm hearing location / format – Melbourne / Project location / combination
5. Whether hearing will be online / in-person / hybrid
6. Whether hearing will be recorded – usually only audio recordings, no transcript produced, “exceptional cases” – generally only ordered for substantial projects with large number of submitters
7. Raise any procedural disputes – give advance notice
8. Don’t underestimate the importance of a directions hearing

## Briefing experts

- Identifying what subject matter experts to call
- Availability and suitability of specific experts
- Cost – apportion costs to the area with the greatest potential to impact the Committee's finding and recommendations as relevant to the concerns of the submitter
- Identify parties with similar interests and explore whether costs can be shared
- Internal "experts" – if can't afford experts consider how any internal technical experts may contribute to providing feedback to Counsel on evidence and submissions

## Expert reports

- Ensure the expert reads and understands the practice note
- Ensure they are briefed with all relevant materials – including information about your business / organisation, how it operates, any current or historical site information or background that may be relevant
- Meet with your expert to ensure they understand your concerns and the nature of your business / organisation
- Ensure they have a site inspection before they finalise their evidence
- Remember: the expert is independent

## Expert evidence

1. Expert reports circulated
2. Conclaves held
3. Joint statements produced
4. Slides should not introduce new material
5. Estimate of cross-examination length
6. Oral evidence / cross-examination

## Cross-examination

- Ensure counsel is aware of all relevant concerns – conference with your barrister and provide comments on reports
- Draw upon relevant internal knowledge / subject matter experts to provide feedback to the legal team
- Cross-examination must have a purpose:
  - Changes to Project Documentation
  - Changes to the draft Planning Scheme Amendment, such as conditions for a proposed incorporated document
  - Identifying something that has been overlooked
  - Identifying errors
- Focus on matters relevant to the ToR that you wish to influence

## Hearing submissions written & oral

- Focus on what matters to your client – provided it relates to the ToR
- The key issues will develop / emerge during the hearing process – effective submissions reflect this
- Be clear but provide sufficient detail
- Respond to the project as currently proposed – there will often have been changes made or new material introduced through technical notes, proposed amendments to Project Documentation, response to RFIs
- Make clear what findings and recommendations you are now asking the Committee to make

## Without prejudice drafting

- Some of the most important outcomes for clients are achieved through this process
- The submissions to exhibition and hearing should have been drafted with a view to supporting the changes you are asking the Committee to recommend
- Expert reports, joint expert statements and concessions in cross-examination may provide a strong basis for requesting specific changes
- Try to get the Proponent onboard with the changes you are seeking before this stage

## Part 3: Legislative reform / State election




Photo: Markus Winkler

## AI – use by experts and submitters

PPV Practice Note/Guidance on use of AI in development

In development – check whether it has been released if involved in a PPV matter – even if you are not using AI, you need to know what the rules given other submitters may be using it

## Environment Protection Reform Act 2025 (Cth)

- Introduces significant amendments to the EPBC Act
- Act passed 1 December 2025
- Tranche 1 – commenced 20 February 2026
- National Environmental Protection Agency commenced 1 July 2026
- Remaining reforms: due to commence 1 December 2026
- National Environmental Standards being developed
- Bilateral agreements and assessment pathways changing
- New changes are intended to make assessments clearer, faster and more consistent – will they?

## Planning Amendment (Better Decisions Made Faster) Act 2026 (Vic)

Act passed 17 February 2026

Takes full effect by 29 October 2027 (unless proclaimed sooner

Section 60 of BDMF amends section 161 of the PE Act – deleting the explicit requirement for panels to be bound by the rules of natural justice

Current:

161 General procedure for the consideration of submissions

(1) In considering submissions, a panel–

(a) must act according to equity and good conscience without regard to technicalities or legal forms; and

(b) is bound by the rules of natural justice

Future:

161 General panel procedure

(1) In undertaking a review of an amendment or application that is referred to it, a panel–

(a) must act according to equity and good conscience without regard to technicalities or legal forms; and

(b) ~~is bound by the rules of natural justice~~

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## Three-tiered planning scheme amendment pathway BMDF – Part 3

- Planning scheme amendment – three-tiered pathway:
  - High-impact – usual panel process applies
  - Medium-impact – no panel hearing, submissions received during notice or consultation must be considered and an engagement report must be published
  - Low-impact – no panel hearing, targeted consultation instead of “exhibition”, planning authority must consider comments and publish engagement report
- Section 20(4) amendments: not categorised
- Regulations will specify the criteria for each impact category
- Minister determines which category
- Draft regulations – public comment closed 19 August 2026, due to be proclaimed October 2026, take effect early 2027

## State election
## 28 November 2026

- Labor policy:
  - Reduce reliance on natural gas
  - Transition to a hydrogen future – enhance infrastructure and have greater focus on hydrogen in future Gas Substitution Roadmaps
  - Responsibly develop the minerals and extractives sectors to enable sustainable technology
  - Continue Victoria's Big Build: $90 billion in 165 major rail and road projects

## State election
## 28 November 2026

- Liberal policy:
  - Reopen Victoria to gas exploration
  - Establish Better Roads Victoria as a standalone division within DTP
  - Fix infrastructure delivery
  - Shift from debt funded megaprojects to local, community focused infrastructure
  - “Reform planning” – limited detail
  - Restore local voice to planning in middle and outer suburbs
  - Scrap VNI West Transmission Project, pause and review Western Renewables Link (WRL)

# Questions?



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