

ASSESSMENTS AND APPROVALS

Environmental impact assessment is a regulatory mechanism provided in the EPBC Act that aims to ensure that significant impacts to matters of national environmental significance are either avoided, mitigated or offset. This mechanism generally applies at a local scale and includes the regulation of Commonwealth land and actions by Commonwealth agencies.

Actions that have, will have or are likely to have a significant impact on a [protected matter](#) are regulated through the environmental impact assessment (EIA) process in Chapter 4 of the Act. The EIA process seeks to ensure that the potential and actual impacts of a particular action are adequately understood and considered in decision-making.

The EIA process under the EPBC Act comprises:

- referral of a project to the Minister – with the Minister determining if the project requires assessment and approval;
- assessment of the impacts of the project; and
- an approval decision.

REFERRAL

WHAT IS A REFERRAL?

A referral involves informing the Minister of a proposal to take an action that may require approval under the Act. A referral identifies the person proposing to take the action and includes a brief description of the proposal, the project location, the nature and extent of any potential impacts, and any proposed mitigation measures.

The onus to refer an action rests on the person proposing to take the action. A referral can also be made by state or territory governments and Australian Government agencies that have administrative responsibilities relating to a proposed action. The Minister may also request that a proposed action be referred, and may deem an action as referred if a referral has not been made.

WHEN IS A REFERRAL REQUIRED?

The Act requires that all actions that have, will have or are likely to have a significant impact on one or more of the protected matters be referred to the Minister. The Department has developed [guidelines](#) to help with the ‘self-assessment’ of potential projects, and invites people proposing to take an action to contact the Department to discuss whether their proposed project will have a significant impact.

REFERRAL DECISIONS

Referrals are publicly notified on the Department website and public submissions are invited. The Minister must take into account any submissions made when determining whether a referred action requires approval (unless a ‘clearly unacceptable’ decision) and if so, the assessment approach to be used.

Independent review of the EPBC Act

The Minister must determine whether assessment and approval is required within 20 business days of receiving a referral. The Minister may decide a proposed action:

- does not require assessment and approval – a not controlled action;
- can be undertaken without assessment and approval, provided it is done in a particular manner – a not controlled action, particular manner;
- is unacceptable, and will not be approved – a clearly unacceptable action; or
- requires assessment and approval – a controlled action.

‘Controlled actions’ are those actions that the Minister decides have, will have or are likely to have a significant impact on one or more protected matters and therefore require assessment and approval under the Act. The protected matters upon which the action may have a significant impact are called the ‘controlling provisions’ or ‘triggers’ for assessment and approval under the Act, for that controlled action.

A flowchart illustrating the referral assessment process can be found on the [Department’s website](#).

ASSESSMENT

If an action is a controlled action it must be assessed under the Act. In most instances, the Minister determines the method of assessment at the same time as the controlled action decision. The Act provides a range of assessment methods to account for the complexity of the project, the scale and magnitude of potential and actual environmental impacts, the level of community interest and public submissions made on the referral for the action. The assessment methods available are:

- assessment on referral information;
- assessment on preliminary documentation (the referral, plus any other relevant material provided by the proponent);
- assessment by public environment report;
- assessment by environmental impact statement (EIS); or
- assessment by public inquiry.

The Minister may also accredit another Commonwealth, state or territory assessment process, either under a bilateral agreement between the Commonwealth and a state or territory government, or on a case-by-case basis (accredited assessment).

Further information on the process and timing requirements for each form of assessment can be found in Divisions 3-7 of Part 8 of the Act. A flowchart illustrating the assessment decision process can be found on the [Department’s website](#).

APPROVAL

Following the assessment of the impacts of the controlled action, the Secretary of the Department must prepare and provide the Minister with a recommendation report relating to the action. Where a bilateral or accredited assessment has been undertaken, the relevant state or territory government provides an assessment report to the Minister. The relevant report informs the Minister’s decision on whether to approve the action.

REQUIRED CONSIDERATIONS

When making a decision whether to approve a project, the Minister must take into account:

- the impacts of the proposed action on protected matters;
- economic and social matters;
- the principles of ESD;
- any community and stakeholder comments about the action;
- the referral documentation;
- the outcome of the impact assessment;
- other relevant information available on the impacts of the action; and
- any relevant comments from Australian Government, state and territory ministers about the action.

The Minister may also take into account the environmental history of the proponent, including the history of a company's executive if the proponent is a corporation.

If, after the assessment documentation has been completed, the Minister is not satisfied that enough information is available to make an informed decision, further information can be requested.

APPROVAL DECISIONS

The options available for an approval decision include:

- approve the action;
- approve the action subject to conditions – actions may be approved subject to any conditions necessary or convenient for protecting, mitigating or repairing damage to relevant protected matters; or
- not approve the action.

Examples of conditions include:

- the way the action is undertaken;
- payment of a bond or other security;
- monitoring, auditing and reporting; and
- use of environmental offsets.

STREAMLINING PROVISIONS

A proposed action which has, will have or is likely to have a significant impact on a protected matter may require approval under both the Act and another Commonwealth, state or territory law.

BILATERAL AGREEMENTS

Chapter 3 of the Act empowers the Minister to enter into bilateral agreements with the states and territories as a means of co-regulatory arrangements.

There are two forms of bilateral agreement:

- an assessment agreement – where state/territory processes are used for assessing the environmental impacts of a proposed action but the approval decision is made by the Minister under the Act; and
- an approval agreement – under which actions that are subject to a bilaterally accredited management arrangement or authorisation process in place under state or territory law do not require further assessment or approval under the Act.

ACCREDITED MANAGEMENT ARRANGEMENTS AND BIOREGIONAL PLANS

The Act provides for the use of management arrangements and bioregional plans to regulate actions having or likely to have a significant impact on a protected matter. Management plans and bioregional plans have the capacity to address the cumulative impacts of activities. For actions or classes of action which are subject to the requirements of:

- a bioregional plan established under section 176 of the Act; or
- a management arrangement and/or authorisation process that has been accredited under subsection 33(3) of the Act, the Minister may decide that further assessment and approval is not required. The EPBC Act has mechanisms that require the Australian Government to report on the effectiveness of the Act. These include Annual Reports and State of the Environment Reports.

The review acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

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