

Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978



Eighth edition, 2023



Department
of Transport
and Planning

Photo credits

Cover images: Department of Transport and Planning

Page 5, 8, 14, 28, 30, 32, 37, 47: Department of Transport and Planning

Page 12, 16, 21, 34, 38, 42: Jack Krohn

Page 2, 7, 11, 18, 22, 25, 41: Geoff Ralphs

Page 24: Kathryn Friday

Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and enable self-determination in line with government's commitments.



© The State of Victoria Department of Transport and Planning 2023

This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Transport and Planning (DTP) logo. To view a copy of this licence, visit creativecommons.org/licenses/by/4.0/

ISBN 978-0-7311-9269-4 (pdf/online/MS word)

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Accessibility

If you would like to receive this publication in an alternative format, please telephone the DTP Customer Service Centre on 9655 6666, or email customer customer.service@delwp.vic.gov.au, or via the National Relay Service on 133 677, www.relayservice.com.au. This document is also available on the internet at planning.vic.gov.au



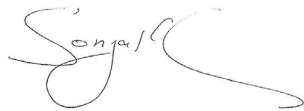
Minister's foreword

The Environment Effects Statement (EES) process is the highest level of environmental assessment in Victoria. Proponents and stakeholders invest heavily in an EES and should be confident that processes and principles are applied consistently and transparently.

Ministerial guidelines accompany the Environment Effects Act to guide and clarify the assessment processes. Periodic updates of the guidelines reflect improvements and changes in assessment practices and procedures and the evolution of stakeholder expectations. This edition details a tiered approach to assessment, while refreshing references to other legislation and policy.

Victorians' expectations about impact assessment and environmental protection continues to mature. Inevitably, proposals to which the Act applies raise strong feelings and controversy. An EES is not expected to resolve all contested matters, but to shed clear light on the environmental issues that decision-makers need to understand and consider.

This refreshed edition of the Ministerial Guidelines is an important step to provide procedural clarity on the process.



The Hon Sonya Kilkeny MP

Minister for Planning



Contents

Minister's foreword	3	Coordinating roles.....	29
Introduction	6	What if a project needs to be put on hold?.....	29
Objectives that underpin the process.....	7	What if the proponent abandons a project?.....	29
Additional information	7		
Understanding the assessment process	8	Public review of an EES	30
Overview.....	9	What is the procedure for public notice?.....	31
Accrediated assessments	10	What should the scope of submissions be?.....	32
Determining the need for referral	12	How are submissions treated?.....	32
Who refers a project to the Minister?.....	16	How should the proponent respond to public submissions?.....	32
What information should be submitted?.....	16	How will submissions be considered?.....	33
Determining the need for assessment	18	When will the report of any inquiry be released?.....	33
What matters does the Minister consider?.....	19	Scoping, preparing and public review of an environment report	34
What response might the Minister make to a referral?.....	20	Scoping and preparing an environment report.....	35
What does it mean if an EES is required?.....	20	Public review of an environment report.....	37
What does it mean if an environment report is required?.....	21	Making the final assessment	38
What does it mean if other conditions are required?.....	21	When might a supplementary statement be needed?.....	39
What does it mean if no assessment is required?.....	21	What is the Minister's assessment?.....	39
Scoping and preparing an EES	22	What can a Minister's assessment say?.....	39
How will scoping requirements be developed?.....	23	When will a Minister's assessment be provided?.....	39
What consultation occurs during the preparation of an EES?.....	23	Does a Minister's assessment bind decision-makers?.....	40
What is a technical reference group?.....	24	How is the public notified of the Minister's assessment?.....	40
What does a technical reference group do?.....	24	Does the Minister's assessment require follow-up?.....	40
What should be included in an EES?.....	25	What if there are variations to a project?.....	40
Matters to be examined.....	26	Making the final assessment following an environment report.....	40
Assessment method.....	27	Coordination with other statutory processes	42
Consistency with statutory provisions.....	27	What do other Acts require?.....	43
Framework for environmental management.....	27		
Is there a format that should be used in an EES?.....	28		
Ensuring an EES is adequate for exhibition.....	29		



Introduction

The *Environment Effects Act 1978* provides for environmental impact assessment of proposed project works¹ capable of having a significant effect on the environment. In Victoria an assessment does not confer approval of a project, rather it informs decision makers when considering project approvals. The Environment Effects Act relies on the referral of proposed projects to the Minister administering the Act for a decision on whether a project proponent is required to undertake an environment effects statement (EES). For the purposes of the Act, the environment is broadly defined. The environment encompasses all physical, biological, social, spiritual and economic systems, processes and attributes.

Environmental impact assessments analyse the potential effects of projects on the environment and the means of avoiding, minimising, managing, rehabilitating and offsetting adverse effects. Assessments are prepared in the context of a systems approach, proportionality to risk and ecologically sustainable development. Transparency, public involvement and the community's opportunity to respond to proposals are vital elements of the assessment process.

Victoria supports a tiered and flexible approach to assessment of proposed projects capable of having a significant effect on the environment. An EES is the state's most rigorous and transparent environmental assessment and is typically reserved for those projects that require integrated assessment across a range of potential adverse effects. For projects with fewer potential adverse effects or impact assessment that doesn't require complex integration, a tailored environment report might be appropriate. Where the potentially significant effects of a project are well known, or limited and readily examined through existing statutory requirements, the Minister might condition a project, or not require any assessment under the Act.

These guidelines are made under section 10 of the Environment Effects Act. They supplement the Act by providing the community, decision makers and proponents guidance on the processes and requirements for:

- referring projects to the Minister;
- assessment scoping, preparing and consulting;
- public review;
- considering public submissions;
- requiring a supplementary statement;
- making the final assessment; and
- coordinating with other statutory processes.

More information about the Environment Effects Act is available on the department's website, along with links to active and historic project referrals and assessments.

¹ Herein the Guidelines use the term 'project' which is synonymous with 'works'.

Objectives that underpin the process

The objective of assessment under the Act is to provide for the transparent, integrated and timely assessment of the environmental effects of projects capable of having a significant effect on the environment. These guidelines bolster that objective by detailing:

- coordination of the assessment process with other statutory processes to support informed decision making;
- clear and timely input from government agencies on legislative and policy issues;
- proponent accountability for investigating potential (adverse and beneficial) environmental effects and their management;
- public access to information on potential environmental effects as well as fair opportunities for stakeholders and public participation; and
- a basis for monitoring and evaluating the effects of works to inform environmental management of the works and improve environmental knowledge.

Additional information

Additional technical guidance on aspects of impact assessment and processes under the Environment Effects Act is also available on the department's website.



Understanding the assessment process



An impact assessment required under the Act should be prepared in the context of a systems approach, proportionality to risk and ecologically sustainable development.

A systems approach considers potentially affected environmental systems and interacting environmental elements and processes. Assessing systems, rather than their components separately, enables potential interdependencies to be identified, helping to focus investigations and tailor opportunities to avoid, minimise, mitigate or manage adverse effects.

A risk-based approach should be adopted in the assessment of environmental effects. Suitably intensive methods should be applied to accurately assess matters that pose relatively high risk of significant adverse effects and to guide the design of strategies to manage those risks. Simpler or less comprehensive methods of investigation may be applied to matters that can be shown to pose lower risk. An environmental risk assessment is not necessary. However, for some projects it might be appropriate to use environmental risk assessment as a tool to help identify potential effects and guide the level of effort for investigations informing impact assessments.

Ecologically sustainable development maintains the ecological processes on which life depends both now and into the future, in a way that safeguards the welfare of future generations.

Overview

The process commences with a screening or referral stage, to determine if assessment under the Act is required (Figure 1). If an assessment is required, there is a scoping stage to determine what the impact assessment needs to examine, ahead of it being prepared by the project proponent. Once completed, the proponent's impact assessment usually goes through public review, prior to the Minister issuing a formal assessment of the project's environmental effects to conclude the process.

A strength of the assessment process under the Act is its flexibility. The Act allows:

- different ways a project can be referred to the Minister;
- tiers of assessment the Minister can require in response to a referral;
- tailored scoping of an EES or environment report;
- specification of process requirements, including timeframes for public comment; and
- different forms of public review or inquiry.

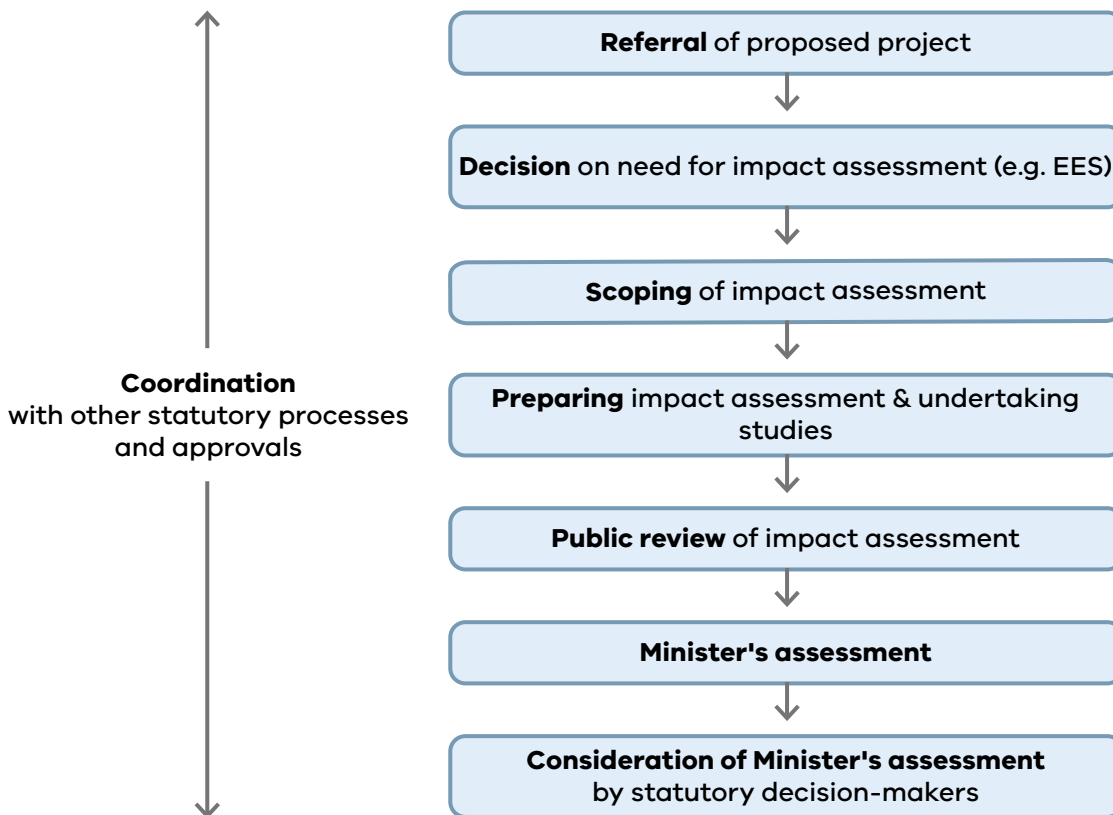


Figure 1: Overview of processes under the Environment Effects Act

Accredited assessments

Under a bilateral agreement between the Australian and Victorian governments, state assessments are accredited to assess impacts on matters of national environmental significance protected under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). An accredited state assessment removes the need for a separate assessment of a 'controlled action' by the Commonwealth under the EPBC Act. To enable a timely decision on use of an accredited assessment, proponents should align referral of their project to the Commonwealth and Victorian Ministers. Where an accredited assessment is undertaken, the Minister's assessment is considered by the Commonwealth Minister when determining whether to approve the 'controlled action' under the EPBC Act.



Determining the need for referral



Where a new or amended project could reasonably be expected to have the potential for a significant effect on the environment, the proponent or a decision-maker needs to ask the Minister whether an assessment is required. A proponent or decision-maker can refer a project as soon as sufficient information is available to identify the potential for significant environmental effects. For a decision-maker, this may not be possible until a proponent submits an application. In either case, early engagement with the department², well ahead of a referral or statutory application, is important and will help proponents and decision-makers determine the most appropriate timing for a referral (Figure 2).

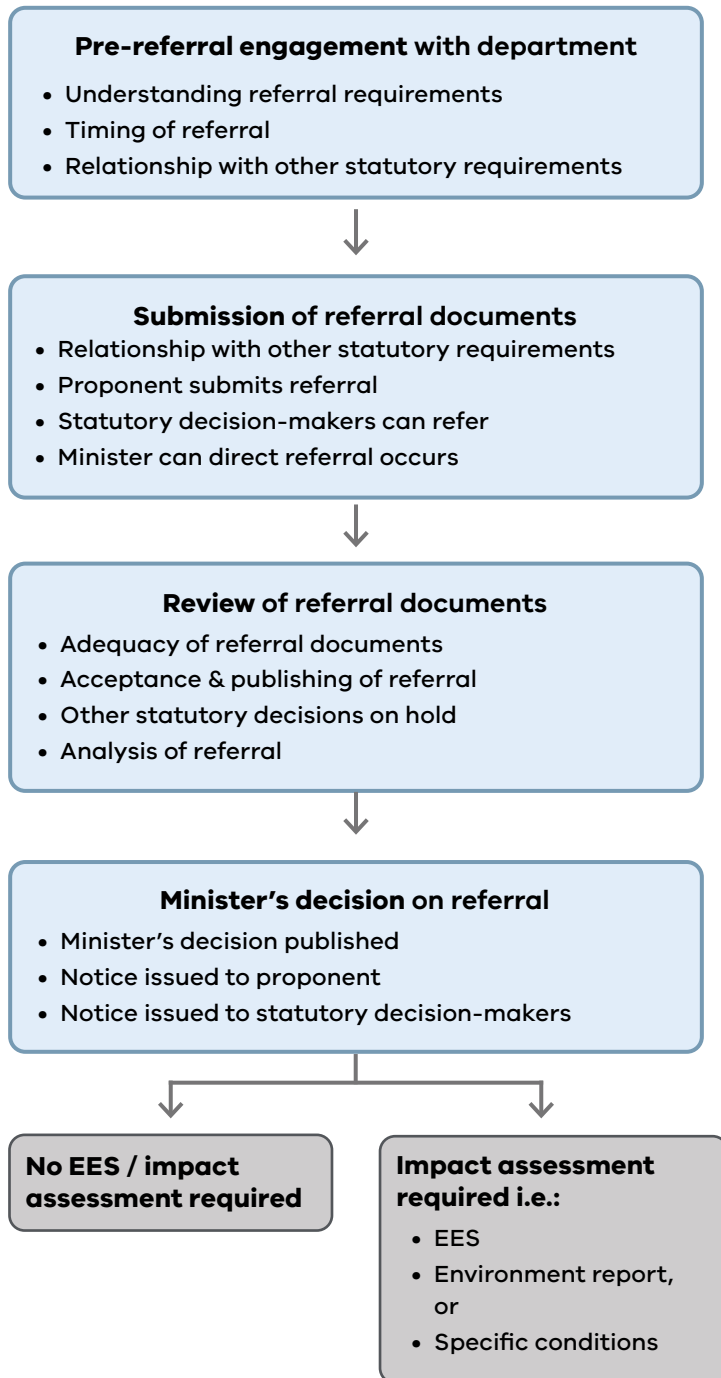


Figure 2: Referral process under the Environment Effects Act

² The department responsible for administering the Environment Effects Act on behalf of the Minister for Planning.

The individual and combined referral criteria shown in Table 1 assist in identifying the significance of a project's potential effects in a regional or state context and inform whether a referral is required. Proponents are encouraged to undertake a thorough self-assessment against the referral criteria. The identification of potential significant effects, and subsequent requirement for referral, does not mean that an assessment will necessarily be required.

A project should be referred in its entirety wherever possible, including ancillary (offsite but essential) works or later project stages essential to the project's operation. Specific ancillary works or later stages of a project would need only be identified rather than described in detail within a referral if:

- only broad project options have been identified, and future investigations will assess these to establish a detailed project proposal; or
- the ancillary works have yet to be planned in any detail but are unlikely to contribute to potentially significant adverse effects of the project, or are not primarily for the purpose of the referred project; or
- later project stages have yet to be planned in any detail and are not essential for the operation and viability of earlier project stages and are unlikely to contribute to any potentially significant (cumulative) effects.

A project proposal that has been modified and has the potential for new or additional significant effects on the environment should be referred, regardless of whether the original project was referred or assessed under the Act.

Separately, an EES must be prepared when the Minister declares a project to be 'public works' with the potential for significant environmental effects under section 3(1) of the Act. The Minister's decision on whether to declare a project to be 'public works' subject to assessment is informed by a project outline prepared by the public proponent. The project outline should include its strategic context, an overview of the project, a summary of key relevant legislation and policy, a preliminary identification of potentially significant environmental effects, an overview of areas for further investigation and stakeholder engagement, and a preliminary environmental management framework.



Table 1: Referral criteria

Individual referral criteria Individual types of potential effects on the environment that warrant referral of a project.	Combined referral criteria A combination of two or more types of potential effects on the environment that warrant referral of a project.
<ul style="list-style-type: none"> • Potential removal, destruction or lopping of 10 hectares or more of native vegetation¹, that consists of, or comprises a combination of: <ul style="list-style-type: none"> – an ecological vegetation class (EVC) classified as endangered; or – an EVC that is classified as vulnerable (with a condition score of 0.5 or more) or rare (with a condition score of 0.6 or more); and – that is not authorised for removal under an approved forest management plan² or fire protection plan. • Potential clearing of an area determined as ‘critical habitat’ under the <i>Flora and Fauna Guarantee Act 1988</i>. • Potential for loss of a significant proportion (e.g. 1 percent or greater) of known remaining habitat or population of a threatened species within Victoria. • Potential for long-term change to the ecological character of a wetland listed under the Ramsar Convention or in <i>A Directory of Important Wetlands in Australia</i>. • Potential for extensive or major effects on the use and environmental values of water resources due to changes in water quality, water availability, stream flows, water system function, or regional groundwater levels, or the health or biodiversity of aquatic, estuarine or marine ecosystems, over the long term. • Potential for extensive or major effects to human health or the environment, or displacement of residents, from pollution or waste emitted to air, land, water or groundwater. • Potential for greenhouse gas emissions exceeding 200,000 tonnes of carbon dioxide equivalent per annum (direct and indirect) attributable to the operation of the facility. 	<ul style="list-style-type: none"> • Potential removal, destruction or lopping of 10 hectares or more of native vegetation¹, unless it is authorised for removal under an approved forest management plan² or fire protection plan. • Matters listed under the <i>Flora and Fauna Guarantee Act 1988</i>: <ul style="list-style-type: none"> – potential loss of a significant area of a listed ecological community; or – potential loss of a genetically important population of an endangered or threatened species (listed or nominated for listing), including from loss or fragmentation of habitats; or – potentially significant effects on habitat values of a wetland supporting migratory bird species. • Potential for extensive or major effects on landscape values of regional importance, especially: <ul style="list-style-type: none"> – where recognised by a planning scheme overlay; – declared as a distinctive area and landscape under the <i>Planning and Environment Act 1987</i>; or – within or adjoining land reserved under the <i>National Parks Act 1975</i>. • Potential for extensive or major effects to the environment due to changes in land stability, disturbance of acid sulphate soils or project-induced soil erosion over the short or long term. • Potential for extensive or major effects on social or economic well-being due to direct or indirect displacement of non-residential land use activities. • Potential for extensive displacement of residents or severance of residents’ access to their community resources. • Potential for significant effects on the amenity of a substantial number of residents, due to extensive or major, long-term changes in visual, noise and traffic conditions. • Potential for extensive or major effects on Aboriginal cultural heritage values protected under the <i>Aboriginal Heritage Act 2006</i>. • Potential for extensive or major effects on cultural heritage places and sites listed on the Victorian Heritage Register or the Victorian Heritage Inventory under the <i>Heritage Act 2017</i>.

¹ Native vegetation is defined in the Guidelines for the removal, destruction, or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017).
² Forest management plan defined as an approved working plan under section 22 of the Forests Act 1958.

Who refers a project to the Minister?

Formal referral of a project can be made by:

- a project proponent; or
- any decision-maker required by an Act or law to make a decision in respect of the project.

Typically, the proponent refers their project under the Act for a decision on the need for assessment. However, the Minister administering the Environment Effects Act can direct a decision-maker to refer a project where there is potential for a project to have a significant adverse effect on the environment. Ministers responsible for the administration of relevant approvals legislation can also direct decision-makers to refer a project. Referral of a project is not necessary if another party has already referred the project, or the decision-maker decides that the project approval should be refused.

When the Minister receives a referral, statutory decisions are typically put on hold until the Minister decides whether an EES, or some other assessment, is required.

What information should be submitted?

EES referrals should be submitted using the referral form available on the department's website. A proponent or decision-maker referring a project should provide the Minister with information about the matters described in Table 2. The Minister may require a decision-maker or proponent to provide additional information to assist in considering a referral.



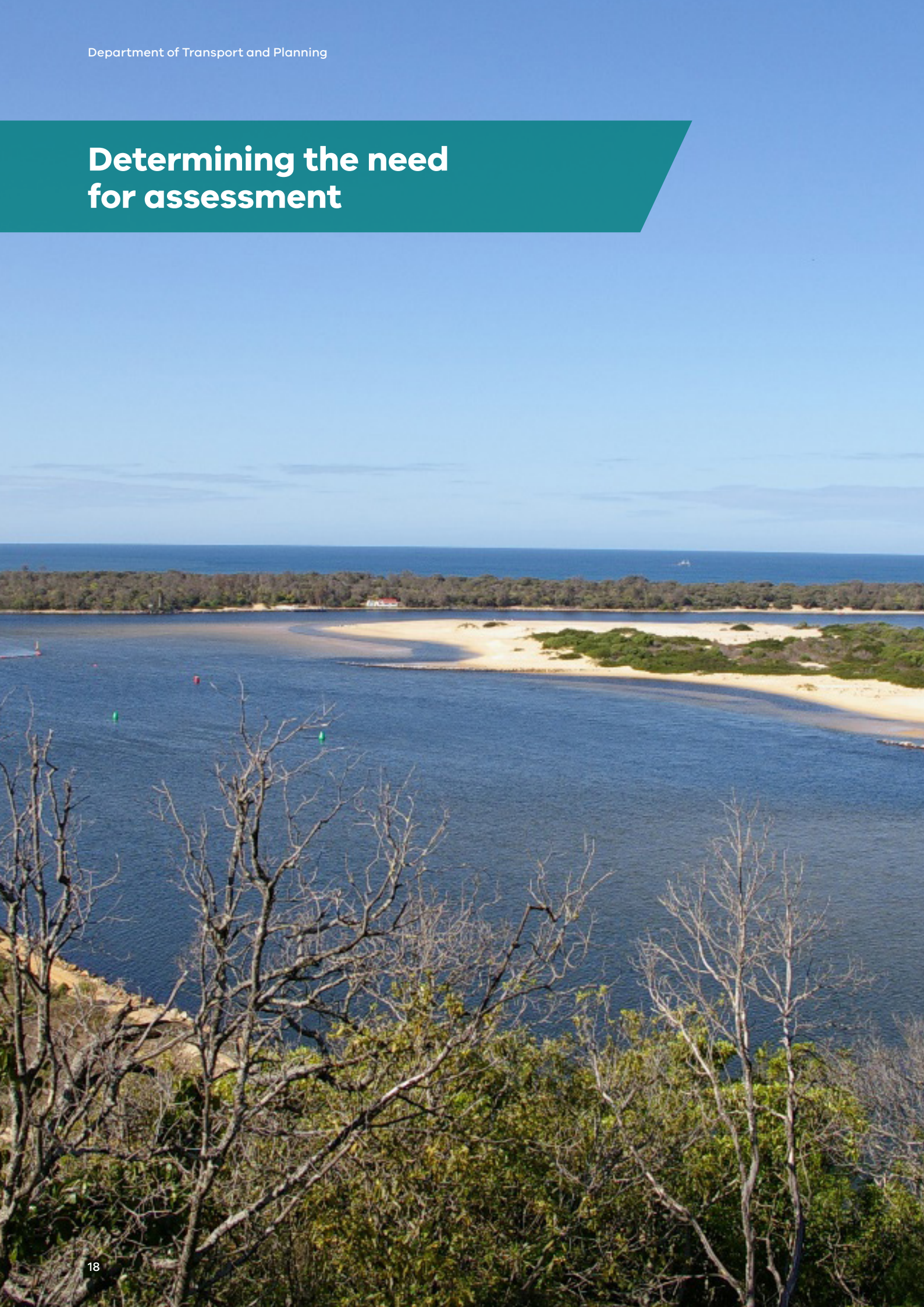
Table 2: Referral particulars

Project	Required information
Particulars of the proponent	Name and postal address of the business, key contact person (who may be a consultant) and their phone and e-mail address and the industry and environmental expertise available to the proponent.
Description of the project	Name, objectives, components, site layout, construction and operational activities. Ancillary works that are directly related to the current project should be documented.
Description of the proposed site or area of investigation	Location map, aerial/satellite image of site and surrounds, ground-level photographs, descriptions of topography, drainage, vegetation coverage, current land use and physical features.
Land availability	Proponent's current and intended tenure over or access to the proposed project area.
Alternatives	Key location, scale or design alternatives already investigated or to be considered as part of the investigation of the project.
Required approvals	Known or potential state or commonwealth statutory approvals and contact details for agency personnel with whom the project has been discussed.
Project implementation	Implementing organisation, intended timeframe and proposed staging.
Environment	Required information
Existing environment	Overview of the project setting and existing environment as well as the sources and accuracy of this information.
Potential effects	Description of potential changes to the environment resulting from the project and an initial assessment of the likelihood and significance of such changes, along with the sources and accuracy of this information, and associated uncertainties.
Mitigation measures	Proposed measures to avoid or mitigate the main potential adverse environmental effects.
Potential cumulative effects	Any other activities in the vicinity of the proposed project that a proponent might reasonably be aware of with the potential for cumulative effects.
Investigation	Required information
Study program	Environmental studies conducted to date by the proponent and any proposed future study program.
Consultation plan	Consultation conducted to date (including activities and stakeholders) by the proponent and any proposed future plan.

Where a project is to be developed in stages, the referral should describe the:

- overall project strategy for delivery of all stages and components;
- concept design or description for the overall project; and
- intended scheduling of the design and development of project stages.

Determining the need for assessment



What matters does the Minister consider?

The Minister, when deciding if assessment is required in response to a referral, will consider the extent to which the project is capable of significant environmental effect in terms of:

- the potential for significant effects on the environment, either from the nature of the change (expected magnitude, extent, and duration) or the environment's capacity to withstand that change (location, rarity, physical/ecological/ social/cultural connections/ etc.);
 - the range and complexity of potential effects and associated uncertainty of available predictions;
 - the adequacy of existing standards and/or statutory assessment processes to address potentially significant effects;
 - the potential efficacy of avoidance and mitigation measures that may be implemented;
 - the availability of project alternatives that may warrant investigation to assess opportunities to avoid or minimise adverse environmental effects;
 - the benefits of an integrated assessment that would not otherwise be achieved under existing statutory assessment processes; and
 - the level of public interest in a proposed project.
- The Minister would typically require a proponent to prepare an EES when:
- there is a likelihood of significant adverse effects on the environment;
 - there is a need for integrated or systems approach to assessment of potential environmental effects of a project (and alternatives); and/or
 - existing statutory processes would not provide a sufficiently comprehensive, integrated and transparent assessment of those potential effects.

Where an EES is not required, the Minister might require an environment report or impose specific conditions. Non-EES assessment processes may be appropriate for projects where focused assessment is required on discrete issues with potential for significant environmental effect. Alternatively, they may apply when the scale of potential effects on multiple environmental values is limited.

What response might the Minister make to a referral?

The Minister will normally provide a decision on a referral within 20 business days of receiving a complete referral with adequate supporting information. The Minister's decision and reasons will be published on the department's website.

Under the Act, the Minister can make one of three statutory decisions on a referral:

1. an EES is required;
2. an EES is not required if conditions specified by the Minister are met; or
3. an EES is not required.

In addition, the Minister may give a decision-maker other advice or assistance to enable a decision to be made.

The Minister can set conditions to be met in lieu of an EES that require assessment via an environment report (rather than an EES). Like an EES, an environment report process has the benefit of being accredited under the EPBC Act bilateral agreement to assess projects that also require approval under the Commonwealth EPBC Act, removing duplication.

The Minister will notify the proponent and any other decision-makers that would need to approve the project of the Minister's decision in response to the referral. When the Minister notifies a proponent or decision-maker that an EES needs to be prepared, the works must not proceed and decision-makers are unable to proceed with decisions, until after the EES has been prepared and the Minister's assessment has been considered.

What does it mean if an EES is required?

When deciding that an EES is required, the Minister will specify the procedures and requirements for the EES. EES procedures and requirements typically include:

- matters that should be subject to in-depth investigation as part of the EES;
- scoping procedures that are to apply;
- a requirement for a study program and schedule;
- a requirement for the department to convene an inter-agency technical reference group (TRG);
- quality assurance procedures to be adopted, including potential for expert peer review of particular matters;
- a requirement for an EES consultation plan to be prepared and implemented by the proponent;
- requirements for advertising and exhibiting scoping requirements, the EES, as well as other information relating to the assessment process; and
- details of any inquiry, if known at the time.

The Minister can also specify matters that do not require investigation as part of the EES, because they will be addressed through another assessment or approvals process and are not related to the EES' assessment of potential effects of the project.

What does it mean if an environment report is required?

The Minister will issue conditions setting the requirements for the environment report. Environment report conditions typically include (as required):

- the key issues and/or environmental effects to be examined;
- the need to undertake specific investigations/surveys;
- the need to prepare particular management plans to accompany the environment report;
- the need to assess specific alternatives;
- the need to consult with particular parties;
- quality assurance procedures to be adopted, including the need for specified peer review; and
- requirements for advertising and exhibiting the environment report and/or other information relating to the assessment process.

What does it mean if other conditions are required?

The Minister can apply other specific conditions to a decision that an EES is not required. Conditions are likely to apply when neither an EES nor an environment report are considered appropriate or necessary, but there remains potential for significant environmental effects that need to be addressed. Conditions might relate to:

- constraining the form, scale and location of development, with specific impact mitigation measures;
- specific investigations or consultation to be carried out; and/or
- specific environmental management requirements.

What does it mean if no assessment is required?

If neither an EES, environment report nor other conditions are set by the Minister, then no assessment of the project is required under the Act. All other relevant statutory consents, approvals and requirements under other Victorian and Commonwealth legislation will still need to be addressed as appropriate.



Scoping and preparing an EES



The set of matters to be investigated and documented in an EES is the scope of an EES. The detailed scope for an EES is set out in the scoping requirements developed by the department and issued by the Minister.

How will scoping requirements be developed?

To assist scoping, the proponent should provide its preliminary list of issues to be investigated and a draft EES study program. On receipt of an adequate draft study program, the department will draft scoping requirements for the EES, generally within 20 business days. The draft scoping requirements will then be exhibited for public comment for a minimum of 15 business days. The proponent is required to advertise the exhibition, via notices in at least one daily newspaper and in one or more local papers for a regional project, or via some other means as agreed with the department.

Scoping requirements will normally be finalised within 15 business days of the close of the public comment period and, when approved by the Minister, made publicly available on the department's website.

Scoping requirements can be amended during the preparation of an EES if substantive technical clarifications are needed, significant changes to a project proposal occur, or unforeseen and significant issues are identified. The proponent will be consulted before changes are made.

Scoping requirements may propose evaluation objectives for each of the key matters or topics to be examined in the EES. Evaluation objectives are intended to provide a framework to guide an integrated assessment of environmental effects and for evaluating the overall implications of the project.

What consultation occurs during the preparation of an EES?

The proponent is responsible for consulting with and keeping the public and stakeholders informed of technical investigations and EES progress. The proponent is required to prepare and implement an EES consultation plan that ensures feedback and the views of potentially affected and interested parties (stakeholders) are obtained during the development of the EES. The plan will document the means and timing of seeking and responding to feedback from the public and stakeholders. A draft plan, together with a preliminary listing of stakeholder issues, should be provided to the department for advice on refining and finalising the plan before it is published on the department's website. There may be a need to provide access to information (in a summary form) in languages other than English, depending on the cultural backgrounds of social groups potentially affected by a project.

Where a project may affect Aboriginal cultural heritage or traditional owners' interests, the proponent should make early contact to identify matters of interest and discuss opportunities for traditional owners' involvement. It is important the views of traditional owners are sought and input and that this be done in an appropriate and respectful manner.

What is a technical reference group?

The process for preparing an EES includes the establishment of a TRG by the department. A TRG'S membership is drawn from government agencies, regional authorities, municipal councils and registered Aboriginal parties (RAPs) that have a statutory, policy or technical interest in relation to the project. TRGs are formed project-by-project and are guided by specific terms of reference developed by the department. The proponent participates in TRG meetings by providing information and promoting, discussing, or responding to project and EES issues.

What does a technical reference group do?

The primary role of a TRG is to advise:

- the department on matters that should be included in the scoping requirements and consultation plan for an EES;
- the proponent on the need for and adequacy of technical EES studies in terms of their consistency with good practice standards of method and analysis; and
- the department on the technical adequacy of the proposed EES, as well as the adequacy of its response to relevant matters.

The TRG provides advice and assistance to the proponent on:

- required statutory approvals and coordination of procedures;
- relevant policies and strategies, and related information requirements;
- the design, method and adequacy of technical studies for the EES;
- availability of relevant data sets and research;
- conformity of the proposal and EES studies with policy and statutory requirements;
- design and implementation of the proponent's public information and stakeholder consultation plan for the EES;
- responses to issues arising from the EES investigations; and
- technical adequacy and completeness of draft EES documentation.

Agencies and authorities participating in a TRG are expected to provide accurate and timely advice regarding matters for which their organisations have specific responsibility. TRGs will treat all provided material in confidence.



What should be included in an EES?

The content of an EES will be guided by the scoping requirements set for each project by the Minister and should be prepared in the context of a systems approach, proportionality to risk and ecologically sustainable development (see Understanding the assessment process). Ultimately, it is the proponent's responsibility to ensure that sufficient studies are undertaken and reported to support an adequate assessment of environmental effects and that effective internal quality assurance has been applied during the preparation of the EES.

A clear and sufficiently detailed description of all relevant components, processes and development stages of a proposed project is needed to enable the effective assessment of potential environmental effects. Where detailed design is to follow an EES, a concept or reference design may be used to describe and assess the project. The project description should set out all relevant aspects of the project's design, construction and operation and its environmental context as follows:

- project rationale and objectives;
- location, technology and design of project components (including essential offsite components);

- site characteristics and surrounding area;
- communities, properties and/or residences that may be affected by the proposal, including a description of the way that they may be affected;
- proposed methods to avoid or mitigate adverse environmental effects and risks, including consideration of the mitigation hierarchy (avoid, minimise, manage, rehabilitate, offset);
- proposed program and time schedule for project implementation; and
- proposed method for implementing the project, including responsibility for construction, operation and, where relevant, rehabilitation and decommissioning.

Where substantial changes to the project are proposed during EES preparation, proponents are encouraged to re-engage with the community, stakeholders and decision-makers early in order to reassess project impacts, proposed methods for mitigating adverse effects and any implications for scoping requirements.



Matters to be examined

Project alternatives

An EES will not normally be required to document alternatives to a project but will consider alternatives for a project. However, the EES should include a rationale for the proposed form of the project. The examination of alternatives for a project, in an EES, should include a screening of feasible alternatives as part of the project planning or design process, leading to a preferred alternative or alternatives. Preferred alternatives should offer clear potential to minimise and/or avoid significant environmental effects whilst meeting the objectives of the project. Consideration of alternatives might entail:

- siting and layouts, where some flexibility is available in terms of site suitability and availability;
- design or process, where one of several approaches could be applied;
- scale, where the magnitude of the project might be varied in response to demand or constraint factors;
- timing of project activities; or
- staging of project development, where construction, operational or other factors might necessitate or provide an option for staged implementation.

The only alternative to a project proposal that will routinely be described in detail in an EES is the 'no-project' scenario. The no-project case provides the current and anticipated conditions if the project does not proceed, as a baseline for describing the project's potential environmental effects. It may also be appropriate for an EES to describe alternative scenarios for a site when the project is decommissioned.

Environmental effects

An EES should provide an assessment of a project's potential effects on the existing environment (including identified future trends such as projected changes to the climate). The assessment should address effects on:

- physical systems including potential changes to geology and soils, landform, landscape, land stability, hydrology and quality of surface, ground and marine waters;
- ecological communities, populations or habitat of indigenous species of flora and fauna and ecosystem processes supporting biodiversity;

- Aboriginal cultural heritage and historical heritage places and values;
- continuation of existing land uses and the potential for displacement of land uses taking into account relevant planning scheme provisions;
- opportunities for future land uses supported by strategic land use policy;
- economic aspects including employment, business and industry viability and economic well-being at local, regional and national scales;
- social aspects including amenity (related to air quality, noise, vibration and traffic and visual changes), continuation of social and recreation activities, access to social infrastructure and community cohesion;
- human health for example related to changes in air quality and the noise environment or changes to public safety; and
- climate change, including greenhouse gas emissions and the ability of communities and ecosystems to adapt to climate change.

Types of environmental effects

Projects may give rise to on- and off-site environmental effects. Environmental effects might occur as a direct result of the project works or activities at, near or downstream of the project site during and after the project's lifetime. In addition, the cumulative effect of a project in combination with other approved projects, known existing activities and/or proposed projects in an area, may need to be assessed if they could have an overall significant adverse effect. All environmental effects—direct, indirect, cumulative—are required to be assessed in an EES where:

- they are reasonably foreseeable;
- there is a causal link between the project and the potential effects; and
- they are potentially significant.

Stakeholder engagement

An EES needs to document the process and results of consultation undertaken by the proponent during the preparation of the EES. Issues raised by stakeholders or the public, and the proponent's responses to these issues, should be reported in the context of the EES studies and the associated consideration of avoidance and mitigation measures.

Assessment method

An EES should provide an analysis of the significance of potential (positive and negative) environmental effects with consideration of the existing environment and future no-project scenarios. The analysis should incorporate desktop review, field survey and stakeholder consultation. If a rating system is used to present the significance of potential effects (e.g. low, medium or high), the criteria used for the various ratings should be clearly described.

Once the project's effects have been identified and characterised, the EES should then:

- propose mitigation measures, where appropriate, to reduce potential effects having regard to the mitigation hierarchy (avoid, minimise, manage, rehabilitate, offset);
- describe the residual effects (post mitigation) and analyse the significance of potential effects;
- propose monitoring and performance criteria to evaluate whether the effects are maintained acceptably over the life of the project (including, decommissioning, rehabilitation and beyond, if required); and
- propose contingency approaches if the effects are not maintained within performance criteria.

Environmental performance criteria might be linked to higher-order objectives for the integrated evaluation of project effects or outcomes. Scoping requirements for an EES may set out evaluation objectives in the context of key issues and relevant statutory provisions.

Consistency with statutory provisions

Scoping requirements may identify relevant legislation and regulations, associated statutory policies, strategies, plans and guidelines, as well as government agreements. However, the EES will need to document the project's consistency with applicable legislation, regulations, statutory policies, strategies, plans, guidelines and agreements. It should also address statutory requirements associated with the key approvals that will be informed by the Minister's assessment, where possible. Matters that are the respective responsibility of state, local and commonwealth governments should be clearly identified.

Framework for environmental management

An EES should incorporate a framework for managing the environmental effects and risks of a project. The framework should include:

- the environmental management system to be adopted (e.g. based on ISO 14001);
- governance arrangements including organisational responsibilities and accountabilities;
- proposed environmental objectives, indicators and performance requirements to guide environmental management and monitoring actions;
- an overview of environmental management plans for the construction and operational phases, and also decommissioning, where relevant;
- a consolidated list of environmental management measures proposed in the EES to address specific issues, including key environmental commitments of the proponent to mitigate adverse effects and enhance environmental performance;
- the proposed program for evaluating environmental outcomes, reviewing and revising environmental management plans, as well as the auditing and reporting of performance; and
- arrangements for management of and access to baseline and monitoring data across the different stages of a project where relevant, to ensure the transparency and accountability of environmental management as well as to contribute to the improvement of environmental knowledge.

Where adaptive management is proposed, the EES will need to demonstrate the capability of the proponent to monitor environmental effects and respond within timeframes that provide reasonable confidence of acceptable outcomes being achieved. Where a combination of 'static' or proactive and adaptive management techniques is proposed, their respective roles should be clearly explained.

Is there a format that should be used in an EES?

The proponent is responsible for preparing an EES that adequately addresses the matters in the scoping requirements and any other relevant issues. These matters need to be sufficiently investigated and clearly documented to enable informed responses by the community, stakeholders and decision-makers. Typically, an EES will comprise:

- a summary document;
- a main report; and
- technical appendices.

EES Summary document

A concise, graphical, non-technical summary will be needed, to draw out key information and give readers a broad overview of the project and a high-level appraisal of the potential effects and their management.

Main report

An integrated, concise, clear, objective, plain English document that provides a comprehensive response to the scoping requirements by describing the proposal, its predicted environmental effects and their proposed management. It should clearly identify where components of the scope are being addressed. The main report draws on technical reports and should be analytical rather than

encyclopaedic in approach. The report should make extensive use of maps, photographs, diagrams and other graphical methods to illustrate key environmental features, project alternatives, potential effects and proposed responses.

Technical reports

Specialist studies, investigations and analyses that provide the basis for the EES main report should be appended to the main report. Technical reports should provide details of literature and database reviews, methods and results of field and laboratory investigations or modelling, and methods and results of impact assessments. Conclusions should be supported with commentary on the reliability of results and sources of uncertainty.

It may be prudent for a proponent to initiate peer reviews of some technical reports. In some circumstances, the Minister may direct the department to appoint independent peer review(s) of complex or particularly controversial matters, or where there may be a range of expert views. The cost of these peer reviews will need to be met by the proponent. The final written advice of peer reviewers appointed by the department will be exhibited together with the EES and provided to an inquiry if one is appointed.



Ensuring an EES is adequate for exhibition

It is the proponent's responsibility to complete an EES that is adequate for exhibition. The EES needs to address the matters in the scoping requirements sufficiently and provide a clear understanding of the project and its likely effects. The department will utilise the TRG to advise on whether these requirements are met. There are three important steps to help ensure the adequacy of an EES for exhibitions:

1. the proponent should adopt internal quality assurance procedures;
2. the proponent should clearly respond to TRG reviews and advice;
3. the proponent should engage with the department on the adequacy of the final proposed EES and seek authorisation from the Minister to exhibit for public comment.

Coordinating roles

To enable efficient management of the EES preparation, the proponent and the department should coordinate their roles. The parties should agree on an EES schedule of:

- dates for delivery of the proponent's consultation plan, draft technical reports and the draft EES, for review by the department and the TRG;
- timeframes for TRG feedback on draft documents as well as for quality review of the proposed final EES;
- timeframes for the proponent to respond to feedback; and
- protocols for giving advance notice of any delays and for revising the agreed time schedule.

Agencies and authorities represented on the TRG will be asked to confirm their commitment to provide feedback within agreed timeframes.

What if a project needs to be put on hold?

Proponents may place a project on hold and ask the department in writing to place the EES on hold. The department will formally place the EES on hold and update the project EES status on the department's website. If the project is later resumed, the proponent should ask the department in writing to resume the EES.

What if the proponent abandons a project?

Proponents that decide to abandon a project and the preparation of its EES should notify the Minister, the department and all relevant decision-makers that it intends to do so.

Public review of an EES



In specifying the procedures and requirements for an EES, the Minister will determine the form and extent of the public review for an EES. The public review process will include:

- public notice of the EES;
- exhibition of the EES for a specified period; and
- receipt of public submissions.

The Minister may also specify the intended form of an inquiry, if one is to be held.

What is the procedure for public notice?

The EES will be exhibited generally for a period of 30 business days but in exceptional circumstances the Minister may decide that a longer period of exhibition is warranted. The proponent is required to give public notice of the exhibition and invite submissions on the environmental effects of its proposed project. Notice will be via an advertisement, paid for and placed by the proponent, in one daily newspaper and in one or more local papers for a regional project, or via some other means as agreed with the department. The notice must be in a form acceptable to the department and include details of:

- the proponent and project;
- the location of exhibited material; and
- how and when submissions should be made.

The exhibited EES should be easily accessed by the public, typically by digital means downloadable from the proponent's website, and may be made available in a web-based interactive version to the satisfaction of the Minister. The department may also specify the proponent place copies of the EES at specified locations and/or make copies available for purchase. Prices for the EES main report and appendices should be set at a level to enable effective access by interested parties. Copies of the EES summary are to be made available by the proponent free-of-charge.

If advertising the EES coincides with applications for statutory approvals, joint advertising will be coordinated. The form of any joint notice, as well as the period and locations of document exhibition, should satisfy the requirements of the EES process.

What should the scope of submissions be?

Written submissions in response to an EES should document comprehensively all the views and information the submitter considers relevant to the assessment of a proposal. Some forms of inquiry may allow limited opportunities for submission of further information. If an EES is jointly advertised with applications for statutory approvals (for instance a draft planning scheme amendment), only one submission is needed to address all views about the EES and the applications. Organisations, or groups of individual submitters with similar issues are encouraged to provide a combined submission. If a petition or pro-forma submissions are received, they will be treated as a single submission.

Government agencies should make a submission to assist the coordinated assessment and decision-making for a proposal, specifically in relation to the technical adequacy and policy alignment of the EES documentation.

How are submissions treated?

Submissions should be received by the advertised closing date. They will be treated as public documents. Submissions and supporting documents will be available to the department, persons responsible for the conduct of an inquiry, the proponent, stakeholders and the public; they may be published online.

In exceptional circumstances, a request may be made to the inquiry for a submission or parts of a submission to be treated as confidential (for instance, for reasons of commercial confidentiality or cultural sensitivity). Such requests will be considered having regard to procedural fairness to other inquiry participants.

If statutory approval applications have been jointly advertised with the EES, the department will put in place arrangements for coordinated receipt and circulation of submissions with the relevant agencies.

How should the proponent respond to public submissions?

To assist in the resolution of issues raised during exhibition, a proponent should produce a document responding to issues raised in submissions (or otherwise through the consultation process). The responses should be provided to the Minister if an inquiry has not been appointed. If an inquiry has been appointed, the documented responses to submissions will be provided as part of the inquiry process. In circumstances where a proponent seeks to negotiate a resolution to issues (for example, mitigation measures), negotiation should take place prior to the commencement of any inquiry, if possible.



How will submissions be considered?

The Minister may choose to appoint one or more persons with relevant expertise to conduct an inquiry into a proposal's potential environmental effects, by considering the EES, submissions received and proponent responses. The Minister may decide in-principle whether to appoint an inquiry, as well as the intended form of inquiry, at the time of deciding that an EES is required. When the Minister decides to appoint an inquiry, options for the form of inquiry include:

- written submissions;
- submitter conference; or
- public hearing.

The Minister will set the terms of reference for an inquiry. An inquiry that is hearing submissions can be conducted in person, or by online video conference, or in a hybrid format (both in person and online). An inquiry will provide the Minister with a written report of its findings and recommendations, for consideration by the Minister in making an assessment. All costs of the inquiry, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs need to be met by the proponent.

Inquiry by written submissions

The Minister may decide to appoint one or more persons to conduct an inquiry based on the written submissions to an exhibited EES, without a hearing or presentation of further information by submitters or expert witnesses. The Minister might choose this approach where the project and EES do not raise complex or contentious issues that would benefit from further public input or need further elaboration or expert witness statements from submitters, or where a small number of submissions is received and no submitter wants to be heard in relation to their submission.

Inquiry by submitter conference

The Minister may invite submitters to attend a submitter conference to enable the issues raised in submissions to be explored by an inquiry, together with the proponent and submitters who want to participate. It may include government agencies. Submitters may ask the proponent questions of clarification through an appointed chairperson. It may provide an opportunity for the proponent and submitters to seek a resolution on some issues. Where appropriate, an inquiry may hold a directions hearing before a submitter conference to provide information and directions on how the submitter conference will proceed. Conferences would not normally allow for presentation of further evidence or expert witnesses in support of a submission.

Inquiry by public hearing

An inquiry by public hearing will generally be warranted for an EES. Public hearings allow proponents to speak about their proposal and submitters to speak about their submissions in-depth. The hearings are to be exploratory and constructive. They will be conducted in an open and equitable manner, consistent with the principles of natural justice, with a minimum of formality and without the need for legal representation. Expert witnesses may present evidence and be cross-examined or asked questions of clarification by other parties or inquiry members, as regulated by the inquiry chair.

Where appropriate, an inquiry conducting a public hearing may convene a special session of parties to seek agreement about the nature of issues in dispute or preferred responses. The inquiry may also convene a special session of expert witnesses and other relevant persons (such as government agency or submitter representatives) to establish a shared understanding of technical matters and establish and record the facts and opinions in agreement and disagreement.

An inquiry by public hearing will normally be appointed where a similar process is required under another Act (such as the *Planning and Environment Act 1987*) for the proposal being assessed. A joint or combined advisory committee/panel/inquiry process will be undertaken. If necessary, the terms of reference for the inquiry under the Environment Effects Act will be adjusted to reflect the statutory requirements of the other process.

When will the report of any inquiry be released?

The report of any inquiry will normally be released at the same time as the Minister's assessment.

Scoping, preparing and public review of an environment report



Scoping and preparing an environment report

The Minister may require an environment report as an alternative form of assessment for a project, as specified in conditions set by the Minister's decision on a referral. Figure 3 compares the assessment stages for the EES and environment report processes, depicting the different requirements and aspects for each stage. The requirements for each environment report process are sourced from the Minister's conditions, and when relevant, the EPBC Act bilateral agreement and relationship with other relevant statutory processes.

An environment report enables efficient examination of specific matters capable of having a significant effect on the environment in a way that is proportionate to the environmental risk posed by the project and need for transparency. An environment report may also encompass impact assessment required for other statutory processes to avoid duplication (e.g. under section 42A(3) of the *Mineral Resources (Sustainable Development) Act 1990*), and/or be undertaken as an accredited assessment under the EPBC Act bilateral agreement, where a project is also a controlled action under the Commonwealth EPBC Act.

The specialist studies, investigations and content of an environment report will typically be guided by a scoping document prepared and issued by the department. Where required, the scope will frame the assessment needs and management of a project's environmental effects. If required, a draft scoping document for an environment report will be exhibited for public comment, but this step is not usually part of an environment report process (Figure 3).

When necessary, the department may appoint a TRG or more typically arrange fit-for-purpose agency consultation for an environment report, to coordinate technical or policy advice on key matters. As with an EES, membership of the group will be drawn from government agencies, regional authorities, municipal councils and RAPs that have a statutory, policy or technical interest in relation to the project. However, for an environment report, consultation and membership of any agency group will be targeted and aligned with matters to be addressed in the environment report, as identified by the Minister's decision.

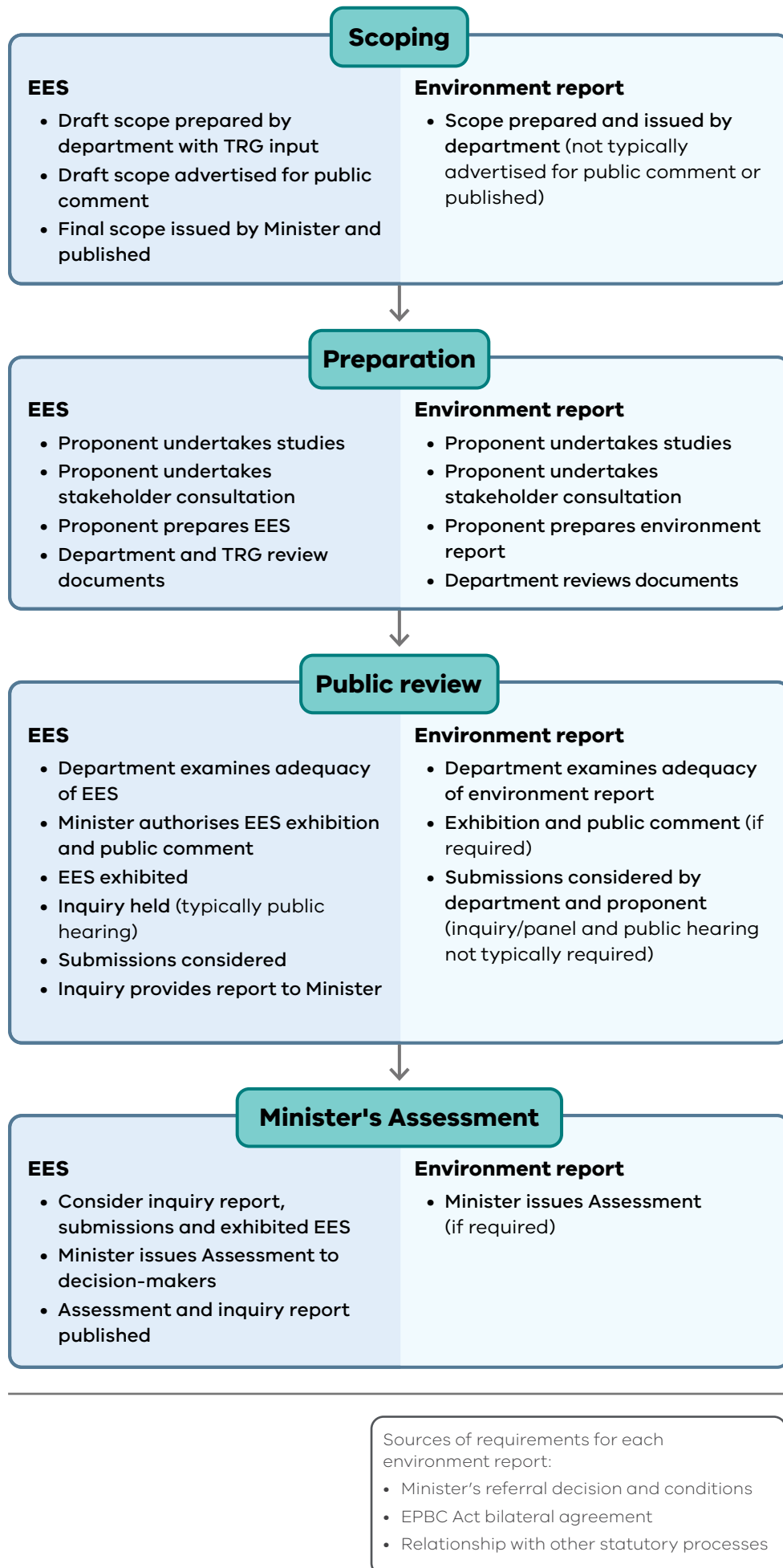


Figure 3: Stages of EES and environment report processes under the Environment Effects Act

Public review of an environment report

The Minister will determine whether it is necessary for public review of an environment report by considering the complexity of issues, level of public interest and other statutory processes and requirements (e.g. application of the EPBC Act bilateral agreement). In rare cases, public review may involve an advisory committee or panel, to reduce duplication and align processes when there is planning approval being sought (e.g. proposed planning scheme amendment or permit application).

When required, exhibition and public review of an environment report will typically entail:

- public notice of the environment report;
- exhibition of the environment report for a specified period (typically 10 to 20 business days), seeking public comment;
- receipt of public submissions by the department; and
- the proponent documenting its responses to issues raised in submissions and providing this to the department.

For some environment report processes, a Minister's assessment of the environmental effects of the project will be needed to inform specific statutory decision-makers.



Making the final assessment



When might a supplementary statement be needed?

The Minister may ask the proponent to provide additional information on specified matters if this is needed to make an assessment of effects. Where the required information will involve extensive investigations, the Minister may formally call for a supplementary statement to be prepared. The proponent may be directed to prepare a supplementary statement at any point between the exhibition of the EES and the making of an assessment. The Minister can specify the procedures to be applied for a supplementary statement and any requirements regarding the scope of the statement.

The Minister will exercise discretion in determining whether the public is invited to provide comments on a supplementary statement. The invitation to provide comments might be limited where a supplementary statement addresses localised issues.

What is the Minister's assessment?

An assessment of the environmental effects of a project by the Minister is the final step in the EES process. Referred to as the Minister's assessment, this step determines whether the likely environmental effects of a project are acceptable. It will provide:

- findings on the potential significance and acceptability of adverse and beneficial environmental effects of the project;
- recommendations for project modifications or environmental management measures required to address likely adverse effects; and
- evaluation of the overall significance and acceptability of likely adverse effects of the project, relative to likely benefits of the project, within the context of applicable legislation, policy, strategies and guidelines.

The Minister's assessment will involve consideration of:

- the EES and any supplementary statement;
- public submissions, the proponent's response to submissions, and supporting information from the proponent or submitters;
- the inquiry report; and
- the objectives and principles of ecologically sustainable development, as well as applicable legislation, policy, strategies and guidelines.

What can a Minister's assessment say?

The Minister's assessment may conclude that:

- a project (with or without limited modifications) would have acceptable environmental effects, having regard to overall project outcomes; or
- a project would have unacceptable environmental effects; or
- a project would need major modifications and/or further investigations in order to establish that acceptable environmental outcomes would be achieved.

In the latter situation, under some circumstances, a further assessment process under the Act may be required. This would be a new and separate process, following a new referral.

A Minister's assessment will also typically provide advice on project implementation and environmental management measures, including:

- opportunities for incorporating necessary measures in conditions of particular statutory approvals or in binding agreements;
- coordinating different aspects of the environmental management regime to ensure an integrated approach for achieving acceptable environmental outcomes; and
- recommended approaches to environmental monitoring and management, including further public involvement.

When will a Minister's assessment be provided?

The Minister's assessment is normally provided to decision-makers and the proponent within 30 business days of receiving the report of an inquiry.

If an inquiry is not appointed to consider an exhibited EES the Minister's assessment is normally provided to decision-makers and the proponent within 50 business days from the close of exhibition, or within 25 business days from the date further information is received from the proponent responding to submissions (whichever is later).

Does a Minister's assessment bind decision-makers?

Relevant decision-makers are required by the Act to consider the Minister's assessment. However, its recommendations are not binding on the decision-maker. To assist in the transparency of the EES process, the Minister will request decision-makers to confirm how the assessment was considered as part of any decision. Where the decision-maker proposes not to adopt part of the assessment, the decision-maker should consult with the Minister prior to making the decision.

Where an assessment is accredited under the EPBC Act, the Minister's assessment is provided to the Commonwealth Environment Minister to inform their decision under the EPBC Act. The Minister's assessment does not bind the Commonwealth Environment Minister.

How is the public notified of the Minister's assessment?

The Minister's assessment will be placed on the department's website. This will occur as soon as practicable after the assessment is provided to decision-makers and proponents.

Does the Minister's assessment require follow-up?

An EES will outline a transparent framework with clear accountabilities for managing and monitoring the environmental effects of a project. The Minister's assessment will provide advice for decision makers on the appropriateness of the proposed framework including requirements for independent auditing or public reporting. This approach enables relevant recommendations of the Minister's assessment to be translated by respective decision-makers into legal obligations.

It is possible that several departments and agencies will have responsibility for enforcing approval conditions, potentially including environmental monitoring, reporting and auditing. The Minister's assessment may suggest the establishment of a committee comprising representatives of relevant departments, statutory authorities and possibly stakeholders to provide a forum for communication about the implementation of an assessed project.

What if there are variations to a project?

Variations to a project during its implementation are common and the response will depend on the circumstances, nature and the scale of any change. Variations in response to the Minister's assessment may be required to respond to issues that have arisen in the EES process to lessen the impact on the environment. The assessment might also set out further investigations and consultation that should be undertaken before preliminary design plans are endorsed. In some circumstances, revised statutory applications may also be needed. Variations may also be required in response to specific requirements by decision-makers.

Where a proponent varies its project and the variation has the potential for significant new or altered adverse effects on the environment, the proponent may need to refer the revised proposal to the Minister for a decision as to whether further assessment is required under the Environment Effects Act. For the removal of doubt, the proponent should consult with the department before proceeding with any variation.

Making the final assessment following an environment report

Following the completion of an environment report and its public review (when required), the Minister may in certain cases issue an assessment of the project's effects, which may be needed to inform specific statutory decision-makers. A Minister's assessment is required when an environment report is undertaken as an accredited assessment under the EPBC bilateral agreement. The Minister's assessment provides conclusions on the acceptability of the likely environmental effects and recommendations for mitigation, similar to a Minister's assessment following an EES. The Minister's assessment will consider:

- the environment report;
- public submissions received on the report, the proponent's response to submissions, and supporting information;
- any report of an advisory committee or panel if one was required; and
- the objectives and principles of ecologically sustainable development, as well as applicable legislation, policy, strategies and guidelines.

When an environment report has been undertaken as an accredited state assessment process for a controlled action under the EPBC Act bilateral agreement, the Minister's assessment is to explicitly cover all relevant impacts on matters of national environmental significance. The Minister's assessment is provided to the Commonwealth Minister to inform the approval decision under the EPBC Act.



Coordination with other statutory processes



The EES process is intended to inform decision-making required for projects to proceed under Victorian legislation. When deciding an EES is required the Minister directs relevant decision-makers to not make decisions until an EES is prepared and the Minister has issued an assessment under the Act and it has been considered by the decision-makers.

Where an EES is required, the Act extends any prescribed time limit within which relevant statutory decisions must be made by one month after the decision-maker receives the Minister's assessment. Where multiple statutory decisions will be informed by the Minister's assessment and statutory applications are being prepared in conjunction with the EES, coordination between the relevant authorities should commence early via participation in the TRG. The TRG should provide clear advice from their organisation on statutory requirements.

To facilitate timely decision-making, the department coordinates the EES with related statutory approval procedures, with advice from the TRG. This may include:

- using the state's accredited EES or environment report process, as the required assessment process under the EPBC Act bilateral agreement;
- coordinating exhibition and public notification of statutory applications in conjunction with advertising and exhibiting the EES;
- coordinating inquiry procedures under the Act with equivalent procedures under other Victorian legislation, for example the *Planning and Environment Act 1987*; and
- providing specific advice in the Minister's assessment to inform relevant statutory and other decisions, under other Victorian legislation.

What do other Acts require?

Projects subject to the assessment under the Environment Effects Act can require one or more of a range of statutory decisions under Victorian legislation before they can proceed. Interactions between the Environment Effects Act and laws that most commonly regulate projects assessed under the Environment Effects Act are outlined on the next page.

Planning and Environment Act 1987

The Planning and Environment Act regulates the use and development of land and sets requirements for permits and planning scheme amendments.

Section 4 of this Act establishes the objectives of planning in Victoria and provides for the Victoria planning provisions. The Victoria planning provisions sets the state-wide planning policy for Victoria, while each council's planning scheme establishes an individual municipal planning strategy and local planning policy framework. Together, the municipal planning strategy and planning policy framework consisting of state, regional and local planning policy, guide planning for decision-making. This framework is also a key reference for the evaluation of projects subject to assessment under the Environment Effects Act.

Where a project requires a planning scheme amendment and an EES, the proposed amendment may be exhibited concurrently with the EES. An inquiry appointed under section 9(1) of the Environment Effects Act to consider the exhibited EES and submissions is also appointed as an advisory committee or panel under the Planning and Environment Act, to consider the proposed amendment. The joint inquiry and advisory committee/panel will provide a single report to the Minister.

If a planning permit is needed for a project, the permit application should be exhibited in conjunction with an EES. To facilitate integrated planning for projects of state or regional significance, the Minister may 'call-in' permit applications under section 97B of the Planning and Environment Act. A permit 'call-in' requires a panel to be appointed under section 153 of the Planning and Environment Act to consider any submissions or objections. Where assessment under the Environment Effects Act is required, such a panel would be jointly appointed as an inquiry.

Environment Protection Act 2017

This Act provides the legislative framework for environmental obligations and protections for all Victorians, with a focus on a prevention-based approach for risks of harm to human health and the environment from pollution and waste.

The legislative framework includes various subordinate instruments, the general environmental duty, principles of environment protection, a framework for management of waste, and establishes a permissions scheme to grant development licences, operating licences, pilot project licences, permits (including in relation to tunnel boring machine spoil) and registrations.

A project may require a permission from the Environment Protection Authority (EPA) under the Environment Protection Act before development can proceed. Before operation of a facility can commence, an operating licence from the EPA may also be required. To minimise duplication, the EPA and the department should advise proponents on the level of detail required in the development licence application and EES regarding technical design and operational aspects, as well as on the EES studies.

The development licence application will normally be exhibited in conjunction with the EES for a project. Formal assessment of the application by the EPA would follow receipt of the Minister's assessment under the Environment Effects Act. The Environment Protection Act provides that where the EPA's decision with respect to a development licence application is substantially in accordance with an assessment under the Environment Effects Act, third parties are not able to seek a review of the decision by the Victorian Civil and Administrative Tribunal.

Climate Change Act 2017

This Act provides the framework for the Victorian Government's climate change response, including emissions reduction and adaptation to the impacts of climate change. The Act establishes a long-term target of net zero greenhouse gas emissions by 2050. It also requires the Victorian Government to set interim emissions reduction targets for five-year periods until 2050 in order to reach net zero. The Act requires publication of a climate change strategy and adaptation action plan every five years.

Section 17 requires that certain decision-makers must have regard to climate change in relation to decisions or actions listed in Schedule 1 to the Act. This includes decisions by the EPA relating to permissions under the Environment Protection Act. Section 20 of the Act provides that the Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles set out in the Act.

Geothermal Energy Resources Act 2005

This Act provides a framework for the large-scale commercial exploration and extraction of geothermal energy. Geothermal energy is vested in the Crown. Section 62 states that a planning permit is not required to carry out any geothermal energy extraction operation if an EES has been prepared and the Minister administering the Act has authorised the operation following consideration of the assessment of the Minister administering the Environment Effects Act.

Mineral Resources (Sustainable Development) Act 1990

This Act provides a legislative framework for the development and regulation of the mineral exploration, mining and extractive industries. The Act applies to all stone and mineral resources, including gold, coal, and mineral sands.

Environmental effects processes are integrated with mining approvals under the Act. An approved work plan under section 40A and a mining licence under section 42 are required before mining can take place. An approved work plan under section 77G and a work authority under section 77I are required before an extractive industry can be carried out. These sections enable consideration of any assessment of the Minister administering the Environment Effects Act of the proposed mining and extractive industry proposals as part of the approvals processes. This integrated process also applies to work plan variations under section 41 and section 77H of the Act. Section 42(7) (mining) and section 77T (extractive industries) state that a planning permit is not required for mining or extractive industries if an EES has been prepared for those works and a mining licence (for mining) or a work authority (for extractive industries) has been granted following the Minister for Resources' consideration of the assessment of the Minister administering the Environment Effects Act.

Section 42A (mining) and section 77HC (extractive industries) of the Act establish a special process that may apply to variations to approved work plans for works that have been assessed under the Environment Effects Act. This process enables variations to be approved without the requirement to obtain a planning permit even if the new work will cause significant additional environmental impacts, provided an environment report is prepared on the additional environmental impacts, exhibited for public comment, and the final variation approved by the Minister for Resources substantially complies with any requirements recommended by the assessment of the Minister administering the Environment Effects Act.

Pipelines Act 2005

This Act applies to the construction and operation of high-pressure pipelines for certain energy and other industrial products. Part 5 of the Pipelines Act outlines the pipeline licence process. If a project requires a pipeline licence, Section 33 allows the notice of application for a pipeline licence to be coordinated with EES exhibition. An inquiry appointed under the Environment Effects Act can be jointly appointed as a panel under Section 40 of the Pipelines Act to consider submissions relating to a pipeline licence application. Mirroring the obligation under Section 8C of the Environment Effects Act, Section 49 of the Pipelines Act requires that the responsible Minister, when determining a pipeline licence application, must consider any assessment of the Minister administering the Environment Effects Act in relation to the proposed pipeline.

Petroleum Act 1998

This Act provides a framework for the regulation of onshore petroleum exploration and development activities (excluding transmission pipelines). Section 120 states that a planning permit is not required to carry out a petroleum production operation if an EES has been prepared and the Minister administering the Act has authorised the operation following consideration of the assessment of the Minister administering the Environment Effects Act.

Greenhouse Gas Geological Sequestration Act 2008

This Act covers onshore exploration for greenhouse gas storage sites and the injection and monitoring of greenhouse gas substance activities. Section 191 states that a planning permit is not required to carry out greenhouse gas substance injection and monitoring operation if an EES has been prepared and the Minister administering the Act has authorised the operation following consideration of the assessment of the Minister administering the Environment Effects Act.

Marine and Coastal Act 2018

This Act provides for strategic planning for the management of marine and coastal areas, through the development of a state-wide marine and coastal strategy and through coastal action plans for specific areas.

Section 65 of the Act requires the consent of the responsible Minister for the use and development of marine and coastal Crown land, including Crown land in Victorian waters and 200 metres inland of the high-water mark. Many coastal or marine projects that are subject to the EES process may also require approval under this Act.

Heritage Act 2017

This Act provides for the protection and conservation of the cultural heritage of Victoria. It creates a framework to identify places of state heritage significance, and of historical archaeological value. It also establishes the processes for obtaining approvals for changes to those places and enforcing compliance. An EES is to include an assessment of effects on historical cultural heritage where relevant as specified in scoping requirements. Projects that are subject to the EES process may also require permits under Section 93 of the Act or consents under Section 124 of the Act.

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The EPBC Act may apply to projects in Victoria independently of whether a referral or indeed assessment is required under the Environment Effects Act. A project is a 'controlled action' under the EPBC Act if it is considered to have or likely to have a significant impact on any matter of national environmental significance protected under the EPBC Act. If a project is a controlled action under the EPBC Act, it requires assessment and approval under the EPBC Act.

When a project is a controlled action under the EPBC Act and requires assessment under the Environment Effects Act, it is possible to rely upon a single assessment process, removing overlap and inconsistency. Victorian assessment processes such as an EES or environment report are accredited under the bilateral agreement between the Australian and Victorian governments, helping to avoid duplication and align environmental decision-making on the project. Proponents should coordinate referral of their project under the EPBC Act and Environment Effects Act to the Commonwealth and Victorian Ministers to enable a timely decision on the use of an accredited assessment process. This helps ensure scoping requirements identify the matters relevant to both the state and potential EPBC Act requirements. When an accredited state assessment is completed for a project, the Minister's assessment is considered by the commonwealth minister when determining whether to approve it under the EPBC Act.

Aboriginal Heritage Act 2006

This Act provides for the protection of Aboriginal cultural heritage in Victoria. Under Section 49 of the Act, all projects assessed through the preparation of an EES are required to prepare a Cultural Heritage Management Plan (CHMP).

An EES is to include an assessment of effects on Aboriginal cultural heritage including cultural values where relevant as specified in scoping requirements. A CHMP would typically be prepared in parallel with an EES and whilst some information would be common between the CHMP and the EES, it is not necessary for the CHMP to be completed prior to EES exhibition. Additionally, certain Aboriginal cultural heritage places and values may be confidential and therefore not able to be presented in a publicly exhibited EES.

The Minister's assessment should inform CHMP approval decisions under the Act by the RAP (where designated) or First Peoples – State Relations.

Flora and Fauna Guarantee Act 1988

This Act provides for the listing of taxa (genera, species, subspecies and varieties), threatened communities of flora and fauna, potentially threatening processes and the designation of critical habitat. Under Section 48 of the Act, a licence or permit is required to take or remove protected flora, and under Section 53, a licence or permit is required to take fish that belong to a listed taxon or community. Projects in natural environments that are subject to the EES process may also require approval under this Act

A new section of the Act (section 4B) contains an obligation or duty on public authorities and ministers to consider the objectives of the Act and potential biodiversity impacts when exercising their functions, reflecting the Victorian Government's commitment to embed biodiversity considerations in government decision making.



