



EES Ministerial Guidelines Refresh

New refreshed edition of the *Ministerial guidelines for the assessment of environmental effects*, under s.10 of Environment Effects Act.

The Minister for Planning has approved new, refreshed *Ministerial guidelines for the assessment of environmental effects under the Environment Effects Act 1978* (eighth edition, 2023) (referred to as the Ministerial Guidelines, 8th edition). These new Guidelines replace the 2006, 7th edition.

Q1. What are the Ministerial guidelines for the assessment of environmental effects?

The *Environment Effects Act 1978* (EE Act) provides for assessment of proposed projects that are capable of having a significant effect on the environment.

Section 10 of the Act enables the Minister for Planning to make guidelines with respect to any matters, to enable the carrying out of the EE Act.

The Ministerial guidelines describe environmental assessment processes and procedures to be followed, including by proponents, the Department and the Minister. Amongst other things, the guidelines describe processes for:

- referral of a project to the Minister for a decision on the need for an environmental assessment/EES;
- matters to consider in deciding if assessment is required;
- scoping and preparing an environmental assessment/EES including consultation requirements;
- public review and submissions on an EES;
- making a final assessment of the environmental effects of a project; and
- coordinating an assessment/ EES with other statutory processes.

Q2. Why is there new, refreshed (8th edition) Ministerial guidelines?

The previous version of the guidelines (seventh edition) was published in 2006. There is a variety of out-of-date content in the 2006 Guidelines and much has evolved since 2006, including improvements in impact assessment practice and environmental policy, legislation

and standards have changed and are now applicable to projects and processes in Victoria.

The 'refresh' updated content in the Ministerial guidelines to better reflect current practices and processes already administered, and changes in legislation and other statutory requirements (since 2006), as well as to clarify some aspects of the process to better support all stakeholders with understanding of steps in the process.

It also includes information on a second tier of impact assessment, namely an environment report, which is an approach that has been in place for some time and now used as common practice in the context of the Bilateral Agreement with the commonwealth under the EPBC Act (since 2014).

Q3. What has changed and not changed in the Ministerial guidelines as part of the refresh?

The EE Act, the EES process and associated requirements have not changed. The key aspects 'refreshed' in the new Ministerial guidelines include:

- Modernising the language.
- Updating references to current legislation, policy and government agencies relevant to projects that may be subject to assessment.
- This included refreshing the criteria used to determine whether a project needs to be referred to the Minister for a decision on whether an Environment Effects Statement (EES) is required (referral criteria). The referral criteria have not been changed, rather refreshed to better reflect current legislation, policy and standards.
- Clarifying and formalising alternative assessment approaches for projects that do not need an EES, but



instead require conditions, or alternative, second tier of environmental assessment, namely an environment report process. This second tier of assessment (environment report) has been in place for some time and now used as common practice since 2014 in the context of the Bilateral Agreement with the commonwealth under the EPBC Act.

Q4. What alternative tiers of assessment are available for projects that don't trigger an EES?

Since 2006, Victoria's EE Act and processes have supported a flexible approach to assessment of proposed projects, which is further clarified through the refreshed guidelines, including a tiered approach already used in the state.

An EES is the state's most rigorous environmental assessment process reserved for projects with the potential for a range of significant adverse effects on the environment and/or complexity that requires transparent, integrated assessment. It is also flexible and scalable to ensure the key environmental matters are addressed. There are options to manage flexibility for an EES, around scoping and public review in particular.

Where the Minister decides an EES is not required the Minister can set specific conditions to be met. A "no EES with conditions" decision may relate to assessing specific effect(s), environmental mitigation measures, specific investigations and/or consultation.

Conditions can also be used to require assessment via an environment report, another, second tier of assessment (alternative to an EES). This is now explicit in the refreshed Ministerial guidelines. An environment report can be tailored to focus on the project's key issues, and without the need for the same levels of governance and/or public review that would typically apply to an EES.

Q5. Has the EES process itself changed or steps in the process, as part of the Ministerial guidelines refresh?

No. The EES process is the same, the referral criteria and scope of capture of proposals is the same. It remains as the state's robust, integrated and transparent assessment process of proposed projects and their environmental effects that has been used effectively and flexibly for many years.

There have been no changes to the objectives and principles that underpin the EES process nor the key steps in the process. There have been no changes to target timeframes that apply to EES process steps, other than the Minister's assessment step which has a target timeframe of 30 business days from the submission of

the report of an inquiry to the Minister for Planning (it was previously 25 business days).

The broad definition of the 'environment' is the same and continues to include physical, biological, heritage, cultural, social, health, safety and economic aspects. Wording is simpler and modernised.

The strong consultation requirements and public participation opportunities that are embedded within the EES process also remain.

Whilst EES referral criteria have been refreshed to bring them in-line with current legislation and policy, the aspects that are refreshed are 'policy neutral', to maintain the types and nature of projects that would be referred for a decision on whether an EES is required.

Nor has the information a proponent provides in a referral for a decision on whether an EES is required changed.

The matters the Minister needs to consider in determining whether an EES or other tier of assessment is required have also not changed.

Q6. What are the expected benefits for stakeholders from the refresh?

Based on past feedback on EES processes, it is understood that community-based stakeholders seek transparency, rigour and meaningful participation, while proponents also seek process efficiency and certainty.

The refreshed content of the Ministerial Guidelines is not changing the process, but it does aim to deliver clearer guidance on current practice, including on alternative assessment processes for projects that do not require an EES (e.g. environment report). Much of this practice has evolved and been applied over a number of years, and the refresh provides documented, improved clarity about this for all stakeholders.

Q7. What are the implications of the Ministerial guidelines refresh for a new project?

Changes to the Ministerial guidelines are largely limited to providing updates and clarity on current practice that has evolved since the publication of the last version of the guidelines in 2006. On this basis, the refreshed guidelines do not include changes to the process, the standards that will be applied and the steps associated with the environmental assessment of projects.

The refreshed referral criteria will help clarify some aspects for current project proponents yet to refer.

However, projects that undertake an assessment process after the publication of the 8th edition of the Ministerial guidelines would be expected to refer to the new version of the guidelines.



Q8. How did stakeholders participate in the Ministerial guidelines refresh?

Due to nature of the refresh, being an update to content in the context of current legislation and policy, the department conducted targeted consultation with government agencies and departments who administer the current legislation and participate regularly in the EES process. These agencies were asked to consider opportunities for updated and new content to better reflect legislation and associated contemporary practices.

Broader engagement with the public and proponents did not occur due to the limited scope of the refresh.

The department engaged an experienced EES consultant to develop a range of considered and viable options for updated content to refresh the guidelines.

Q9. What other forms of EES guidance is available?

When necessary, Advisory Notes are prepared by DTP Impact Assessment Unit (IAU) to provide more detailed technical and procedural guidance on aspects of the EES process in the Guidelines and Act.

DTP IAU prepares and updates Advisory Notes in response to emerging issues and stakeholder feedback. The Advisory notes aim to improve understanding of impact assessment and the EES process and to encourage improvement in impact assessment practice.

These can be found here EES document resources (planning.vic.gov.au)

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