



# Environmental Defenders Office

## Environmental Impact Assessment under the Environment Protection Act 2019 (NT)

*Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).*

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*This factsheet was last updated on 29 April 2022*

### Introduction

The [Environment Protection Act 2019 \(NT\)](#) (**Act**) commenced in the Northern Territory on 28 June 2020, replacing the Environment Assessment Act 1982 (NT) and the Environmental Assessment Administrative Procedures (NT).

One of the most important and significant changes under the new Act is the introduction of a comprehensive environmental impact assessment and approval process. The purpose of this process is to ensure there is no unacceptable impact on the environment, now or in the future, and that all actions that may have a significant impact on the environment are assessed and subject to appropriate conditions.<sup>1</sup>

If a project or development (**action**) will, or is likely to, have a [significant impact](#) on the environment, the person/s who propose the action (**proponent/s**) need to get environmental approval from the Minister for the Environment (**Minister**) before they can take any action. The proponent also has to comply with the conditions of the approval.

This factsheet provides a general overview of the environmental impact assessment process. You can find more detailed information, guidelines and other resources on the Northern Territory Environment Protection Authority (**NT EPA**) website.

Visit: The NT EPA's page on [Environmental Impact Assessment](#) for more information, including flowcharts, policies and guides for different aspects of the process.

Read: EDO article on the [New Environment Protection Act in the Northern Territory](#)

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<sup>1</sup> *Environment Protection Act 2019 (NT) s 3(a)-(e).*

## Stages of environmental impact assessment and approval

The NT environmental impact assessment and approval system has five stages:

1. Pre-referral

Proponent makes a self-assessment on whether their project requires referral.

2. Referral

The NT EPA identifies whether an environmental approval is required and, if so, determines what level of assessment is required. There is an opportunity for public comment at this stage of the process.

3. Environmental impact assessment

There are different methods or tiers of assessment and opportunities for public comment depending on the NT EPA's information requirements, level of risks and potential impacts and complexity of the project.

4. Environmental approval

The Minister decides to issue or refuse an environmental approval.

5. Post environmental approval

The proponent (environmental approval holder) must comply with the conditions of the environmental approval. The CEO of the Department of Environment, Parks and Water Security is responsible for monitoring compliance with the conditions and undertaking enforcement action where necessary.

Where a proposed action in the NT will also affect another jurisdiction, the Minister may enter into an agreement with a relevant State, Commonwealth or Territory Minister to establish a single environmental impact assessment process for a proposed action.<sup>2</sup>

Read: EDO factsheet on the [EPBC Act, Referrals and Opportunities to Comment](#)

Visit: The NT EPA's Guide to [Environmental impact assessment and environmental approval in the NT](#) for more information about the EIA stages.

Visit: The NT EPA's [Flowchart of the environmental impact assessment process and approval timelines](#)

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<sup>2</sup> *Environment Protection Act 2019* (NT) s 45(2)(3).

## Stages 1 and 2: Pre-referral and referral

An action should be referred to the NT EPA if it has the potential to have a significant impact on the environment. A significant impact is an impact of major consequence, taking into account:<sup>3</sup>

- (a) The context and intensity of the impact; and
- (b) The sensitivity, value and quality of the environment impacted on and the duration magnitude and geographic extent of the impact.

The Minister can also declare activity-based or location-based referral triggers under the Act. If an action meets a referral trigger then the proponent must refer it to the NT EPA for assessment. So far, no referral triggers have been declared under the Act.<sup>4</sup>

There are three main referral pathways under the Act:<sup>5</sup>

### 1. Proponent referral

The proponent self-assesses their action. If their action has the potential to have a significant impact on the environment or meets a referral trigger, then the proponent must refer the action to the NT EPA for assessment.

### 2. NT EPA call in

If the NT EPA believes on reasonable grounds that the proponent is taking an action that should have been referred to it for assessment, then it may require the proponent to refer the action to it within a specified period of time.

### 3. Statutory decision maker referral

If the proponent applies to a statutory-decision maker (**SDM**) for an authorisation of a proposed action and the SDM considers that the action should be referred to the NT EPA, the SDM:

- (a) may refuse to consider the application until it is referred to the NT EPA, and;
- (b) must take all reasonable steps to encourage the proponent to refer the action to the NT EPA; and
- (c) may refer the action to the NT EPA.

An example of where the SDM pathway may apply is where a proponent applies to the relevant government official or body for a land clearing permit or water licence in relation to a project with the potential to have a significant environmental impact.

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<sup>3</sup> *Environment Protection Act 2019* (NT), s 11.

<sup>4</sup> *Ibid*, s 30.

<sup>5</sup> *Ibid*, Pt 4, Div 3.

### Step 3: Environmental Impact Assessment

Once an action is referred, the NT EPA will review the referral documents and consider whether it should accept the referral.

If the NT EPA accepts the referral then it will decide whether and what kind of environmental impact assessment (**EIA**) is required. An accepted referral for a proposed action is published on the NT EPA's website for 20 business days (30 in the case of a proponent initiated referral for an Environmental Impact Statement, the highest tier of assessment, discussed further below).<sup>6</sup> This is an opportunity for members of the public and government authorities to review the proposed action and make submissions in relation to the NT EPA's decision.

An EIA may consider the potential impact of a proposed action on the biological or physical environment, human health and wellbeing, communities or cultural and natural values. It may also consider potential economic costs or benefits and any cumulative impacts.<sup>7</sup>

The [Environment Protection Regulations 2020 \(NT\)](#) include three different methods or tiers of EIA that reflect the NT EPA's information requirements and complexity, risks and potential impacts of the project.

1. Assessment on referral information:<sup>8</sup>

The NT EPA prepares a report of its findings and advice to the Minister on whether to issue an environmental approval. This is based on the original referral and any further information provided. There are no further opportunities for public comment.

2. Assessment on supplementary environmental report (SER)<sup>9</sup>

The NT EPA prepares an assessment report based on the original referral, any further information, and a supplementary environmental report prepared by the proponent. Members of the public can comment on the SER.

3. Assessment by Environmental Impact Statement (EIS)<sup>10</sup>

The proponent must prepare an EIS for the action which addresses terms of reference approved by the NT EPA. This is for high risk actions where other approaches may not provide the necessary level of consultation or confidence, and forms the most intensive level of assessment. Members of the public can comment on the terms of reference, on the proponent's draft EIS, and on the proponent's Supplement to the EIS, which is prepared after feedback from the NT EPA on the draft.

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<sup>6</sup> *Environment Protection Regulations 2020 (NT)*, cl 52 ('The Regulations').

<sup>7</sup> *Ibid*, cl 79.

<sup>8</sup> *Ibid*, cl 117.

<sup>9</sup> *Ibid*, cl 118.

<sup>10</sup> *Ibid*, cll 128-146.

The Act also provides for an assessment by inquiry.<sup>11</sup> This can be used for all or some components of the EIA process where it is considered to be more appropriate than a paper-based approach - for example where cultural or language issues pose a barrier to potentially affected communities from engaging in the process.

Visit: The NT EPA's [Flowchart of the environmental impact assessment process and approval timelines](#)

Visit: The NT EPA's [Consultation Hub](#) to find out about projects going through environmental impact assessment and opportunities for public comment

Visit: The NT EPA's [Guide to making a public submission during the environmental impact assessment process](#)

#### Stage 4: Grant or refusal of environmental approval by the Minister

Once it has assessed the proposal, the NT EPA gives its assessment report, a draft approval and any submissions it has received to the Minister.<sup>12</sup>

The Minister may:

- accept and grant the approval,
- grant an amended approval, or
- refuse to grant the environmental approval.<sup>13</sup>

If the NT EPA considers the action will have an unacceptable environmental impact, which cannot be appropriately avoided, mitigated, managed, or offset, then it will give its assessment report to the Minister with a “statement of unacceptable environmental impact”.<sup>14</sup> If the Minister accepts the statement of unacceptable impact, the Minister must refuse to grant an environmental approval.

In deciding whether to grant (or refuse) an environmental approval, or to accept a statement of unacceptable impact, the Minister must have regard to (amongst other things):<sup>15</sup>

- the objects of the Act;
- the assessment report; and
- whether the proponent is a fit and proper person to hold an environmental approval.<sup>16</sup>

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<sup>11</sup> The process for assessment by inquiry is set out in clauses 147-155 of the Regulations.

<sup>12</sup> *Environment Protection Act 2019* (NT), ss 64, 65.

<sup>13</sup> *Ibid*, s 69 (1)(a)-(c).

<sup>14</sup> *Ibid*, s 66.

<sup>15</sup> This includes the principles of ecologically sustainable development.

<sup>16</sup> *Environment Protection Act 2019* (NT), ss 73(1), 76(2).

The Minister must also be satisfied that:

- the community has been consulted,
- the significant impacts of the action have been appropriately avoided or mitigated or can be appropriately managed, and
- if appropriate, environmental offsets can be provided for significant residual adverse impacts.<sup>17</sup>

### **Environmental approval conditions**

An environmental approval may also be granted subject to any conditions the Minister considers necessary in relation to the potential environmental impacts of the action.<sup>18</sup> The Minister may impose conditions requiring the approval holder to:

- provide an environmental protection bond (amount determined by the Minister);<sup>19</sup>
- pay an environmental protection levy;<sup>20</sup>
- report to the CEO on compliance with the approval;<sup>21</sup> and/or
- to manage the potential health, social and cultural impacts of the action.<sup>22</sup>

## **Stage 5: Compliance and Enforcement**

There are a number of compliance and enforcement actions available under the Act to ensure that proponents comply with their environmental approvals and any breaches of those approvals are dealt with.

## **What are the proponent's duties to Aboriginal people and communities?**

A proponent of an action has a number of general duties under an EIA process, including to:<sup>23</sup>

- Give information to communities and provide opportunities for consultation;
- Consult with affected communities in a culturally appropriate manner;
- Write down community knowledge and understanding of the natural and cultural values of areas that may be impacted by the proposed action (including scientific and traditional knowledge); and
- Address Aboriginal values and the rights and interests of Aboriginal communities.

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<sup>17</sup> *Environment Protection Act 2019* (NT), ss 73(2), 76(5).

<sup>18</sup> *Ibid*, s 84(1).

<sup>19</sup> *Ibid*, s 86(1).

<sup>20</sup> *Ibid*, s 86(2).

<sup>21</sup> *Ibid*, s 87(1).

<sup>22</sup> *Ibid*, s 88(1).

<sup>23</sup> *Ibid*, s 43.

## What if the proponent wants to vary their proposal or action?

A proponent who has referred a proposed action or strategic proposal to the NT EPA must give the NT EPA notice of any proposed significant variation to the proposal.<sup>24</sup> A significant variation is one which will:

1. Alter the action to the extent that a reason for referral that did not previously apply now applies;
2. Has the potential to have a significant impact on the environment; or
3. Will result in new or additional areas being subject to a potential significant impact on the environment.

The NT EPA may require the proposed variation to be subject to a new assessment process.

Read: The NT EPA's guidance on [Referring a significant variation to the NT EPA](#) for more information about the processes for dealing with proposed significant variations.

## How does the EIA process affect other authorisations?

If a planning consent, water licence, or other kind of authorisation has already been granted for a project, the effect of the relevant authorisation is suspended while the EIA process is underway.

A statutory authority cannot decide to issue or vary a permit or approval which is inconsistent with the environmental approval. A permit granted before or after the environmental approval is of no effect to the extent it is inconsistent with an environmental approval.

## Challenging a decision to grant (or refuse) environmental approval

If you have been directly affected by a decision under the Act or have made a genuine and valid submission during an environmental impact assessment and approval process, you may be able to seek judicial review in the Supreme Court.<sup>25</sup>

N.B. EDO recommends that you seek independent legal advice before commencing legal action.

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<sup>24</sup> *Environment Protection Act 2019* (NT), s 51(1)-(2).

<sup>25</sup> *Ibid*, s 276(1).

If you are unsuccessful in the Supreme Court, you may be ordered to pay the legal costs of the other parties.

Read: EDO factsheet on [Judicial Review and Merits Review in the NT](#)

Read: EDO [Northern Territory Toolkit 1: Judicial Review in Environmental Matters](#)

Visit: The Supreme Court of the Northern Territory's [website](#) for more information about the Court