



Reconsideration Requests under s 78A of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

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](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

This factsheet was last updated on 10 February 2026

N.B. This factsheet relates to the existing provisions in the EPBC Act. The Environment Protection Reform Act 2025 (Cth) made changes to provisions relating to reconsideration requests, including introducing a time limit for making reconsideration requests of 28 business days from the original decision. This change will likely take effect before the end of 2026. **EDO will update this factsheet once further information becomes available, and when these amendments come into effect.**

What is this factsheet about?

Section 78A of the *Environmental Protection and Biodiversity Conservation Act (1999) (Cth)* (**EPBC Act**) enables members of the public to ask the Commonwealth Minister for the Environment (**Minister**) to reconsider a decision made under s 75 of the Act.

Outline

(Click subheadings to skip to that section)

Key takeaways.....	2
What are controlled action decisions?	2
What are reconsideration requests?	3
Grounds for making a request	3
Is revocation and substitution warranted?	4
How do I make a reconsideration request?	5
Finding relevant information.....	5
What happens once I make a reconsideration request?	6
Evaluate this resource.....	Error! Bookmark not defined.

Key takeaways

- A person may make a request under s 78A of the EPBC Act for the Minister to reconsider a controlled action decision, on the basis that:
 - there is substantial new information available
 - there has been a substantial change in circumstances
 - the decision was made on the basis the action would be taken in a specific manner, and the action is not being or will not be taken in that manner
- The Minister must revoke the decision and make a new decision if the request demonstrates one of these grounds for changing the decision is satisfied and revocation and substitution of the decision is warranted in the circumstances.
- A reconsideration request must be made after a controlled action decision has been made, and before a final approval decision has been made.
- You may access information relevant to making a request on the [EPBC Act Public Portal](#), and by making requests for reasons or freedom of information requests.
- EDO has prepared a template request that you may use – see [Appendix A](#).

What are controlled action decisions?

If an action has or will have, or is likely to have, a significant impact on matters protected under the EPBC Act (**protected matters**), it must be referred under the EPBC Act.¹

An action having or potentially having such impacts will be a **controlled action**, meaning it will need to be assessed and approved under the EPBC Act before it can be undertaken.

When an action is referred, the Minister will make a **controlled action decision**, in which they will determine:²

- whether the action is a controlled action
- if so, what protected matters might be impacted by the action

Controlled action decisions are published on the [EPBC Act Public Portal](#). Assessment and approval of the controlled action under the EPBC Act will focus on the protected matters identified in the controlled action decision.

N.B. The Minister must invite public comment when making a controlled action decision.³ See EDO's factsheet on [The EPBC Act, Referrals and Opportunities to Comment](#) for information on what to include in a public comment.

¹ Protected matters include World Heritage Properties; National Heritage places; listed threatened species and ecological communities; listed migratory species; and Commonwealth marine areas. See Part 3 of the EPBC Act, for example, ss 12, 15B, 16, 18, 20, 21, 23, 24A, 24B, 24D; protected matters are also referred to as 'matters of national environmental significance', or 'MNES'.

² EPBC Act, ss 67, 67A, 68(1), 75(1).

³ EPBC Act, s74(3).

What are reconsideration requests?

A person can request for the Minister to reconsider a controlled action decision,⁴ being:

- whether the action is a controlled action
- the protected matters relevant to the assessment of the controlled action

This is called a **reconsideration request**.

When a valid reconsideration request is made, the Minister will revoke the decision and make a new one if:⁵

- any of the grounds for changing the decision (outlined below) are satisfied
- revoking and remaking the decision is warranted in the circumstances

If not, the Minister will confirm the original decision.

N.B. Only a controlled action decision can be the subject of a reconsideration request under s 78A. You cannot make a reconsideration request about other decisions, including a decision on the method to be used to assess a controlled action.

Grounds for making a request

A reconsideration request must be made on specific grounds, being that:⁶

- a. there is new information available about the impacts of the action
- b. there has been a change in circumstances relating to the impacts of the action
- c. the Minister decided the action was not a controlled action if it would be taken in a specific manner, and the action is not being, or will not be, taken in that manner

N.B. A request **must** relate to the impacts of the action on protected matters.⁷ It is not sufficient, for example, to provide information on impacts on the way part of the action is to be taken if this does not impact a protected matter; or on impacts on aspects of the environment that aren't protected matters.

- a. New information available

⁴ EPBC Act, s 78A.

⁵ EPBC Act, ss 78, 78A; [EPBC Act Policy Statement - Reconsideration: Implementing the requirements of sections 78, 78A, 78B and 78C of the EPBC Act \(Policy Statement\)](#), pp 4, 6. See Policy Statement, p 11 for details on what questions and materials the Minister will consider when making a new decision.

⁶ EPBC Act, ss 78A(1), 78(1)(a)-(b).

⁷ An 'impact' means an event or circumstance that is a direct or indirect consequence of action: EPBC Act, s 527E. An action will be an indirect impact if it is a 'substantial cause' of the event or circumstance, subject to other requirements in s 527E(2) of the EPBC Act. For more information, including examples of what kinds of impacts that might be 'indirect impacts, see Department, [EPBC Act Policy Statement - 'Indirect consequences' of an action: Section 527E of the EPBC Act](#) (2013), p 2.

This ground will be satisfied if the request provides or identifies information that:⁸

- is substantial, meaning real or of substance, and not trivial or inconsequential
- is new, meaning it was not considered by the Minister or Department when making the decision, either because they did not have it, or it didn't exist at the time
- provides evidence relating to the impacts of the action, which demonstrates that the impacts are substantially different than determined in the decision

N.B. Controlled action decisions cannot be affected by, or revoked or challenged due to, 'listing events' that happen after a controlled action decision is made.⁹

This means that you cannot refer to or rely on a listing event as new information or a change in circumstances for the purposes of a reconsideration request.

b. Change in circumstances

This ground will be satisfied if the request provides information about a change in circumstances that:¹⁰

- is real, involving some tangible influence affecting the impacts of the action or the way it can be taken (e.g. changes to the environment or relevant laws)
- is unforeseen at the time of the decision, meaning it was not considered by the Minister (e.g. it was not in the proponent's documents or the brief for the decision)
- substantial, meaning real or of substance, and not trivial or inconsequential
- provides evidence relating to the impacts of the action, which demonstrates a change in the potential impacts of the action is likely to happen

c. Action not to be carried out in a specific manner

This ground may be available if the controlled action decision states the action is not a controlled action so long as it is taken in a specified manner. An example of a particular manner decision is the Bass Strait Blue Economy Zone, Marine Aquaculture Trial in Commonwealth Waters ([EPBC 2024/09946](#)).

This ground will be satisfied if the request provides information demonstrating the action is not being or will not be taken in the manner specified, as the person taking the action does not intend, is unable, or is presently failing to take the action in the specific manner.¹¹

Is revocation and substitution warranted?

⁸ EPBC Act, s 78A(2)(c); EPBC Regulations, reg 4AA.01(3); Policy Statement, pp 5-7.

⁹ EPBC Act, s 158A. 'Listing events' are defined in this section to include an area being declared a World Heritage property or National Heritage place; a changing in the listed heritage values or boundaries of such a place; a species or ecological community being listed as threatened; or such a species or community becoming listed in another category; or a species being listed as a migratory species.

¹⁰ EPBC Act, s 78A(2)(c); EPBC Regulations, reg 4AA.01(4); Policy Statement, pp 5, 7-8.

¹¹ EPBC Act, ss 78(1)(b), 78A(2)(c); EPBC Regulations, reg 4AA.01(5); Policy Statement, p 9. It will usually not be sufficient to indicate the proponent is having difficulty complying with requirements.

It will be warranted to revoke and re-make the original decision if the Minister is satisfied the information in the request shows there will be or is likely to be significant impacts on protected matters not identified in the controlled action decision, such that:¹²

- different or additional protected matters would be identified
- the action that was decided to not be a controlled action is a controlled action

For example, if the original controlled action decision identified only listed threatened species as a relevant protected matter, and a reconsideration request identifies new information about impacts of the action on:

- a listed threatened species, revocation will not be warranted because the relevant protected matters would remain the same if a new decision was made
- a Commonwealth marine area, this could warrant revocation because a new decision could identify this as an additional protected matter

How do I make a reconsideration request?

Any person, other than a State or Territory Minister, may make a reconsideration request.¹³

For a reconsideration request to be valid, it must include:¹⁴

- identification of the relevant proposed action (i.e. title and EPBC number)
- the ground or grounds upon which the request is being made
- information related to the grounds, depending on grounds relied upon
- the source of the information provided, and details of when it became available

You should also identify the protected matters you think are relevant to the action.

EDO has prepared a template that you may use – see [Appendix A](#).

A request must be made in writing to the Minister,¹⁵ by post or email.

A request must be submitted before an approval decision is made in relation to the action.¹⁶

Finding relevant information

Documents related to the proposed action will be available on the [EPBC Act Public Portal](#). You may also be able to seek other information to help understand how the Minister came to a controlled action decision, and what grounds of reconsideration may be available:

Reasons

¹² Policy Statement, p 8.

¹³ EPBC Act, s 78A(1).

¹⁴ EPBC Act, s 78A(2)(b)-(c); [Environment Protection and Biodiversity Conservation Regulations 2000 \(Cth\) \(EPBC Regulations\)](#), reg 4AA.01(2)-(5); Policy Statement, p 5.

¹⁵ EPBC Act, s 78A(2). Visit the Parliament of Australia's [website](#) for details on how to contact Ministers.

¹⁶ A controlled action decision cannot be revoked once an approval decision is made under s 133 of the EPBC Act: see EPBC Act, s 78(3)(a); Policy Statement, p 11.

Reasons for a controlled action decision should set out why the Minister made the decision, the evidence that was relied upon, and the weight that was given to various considerations.

If reasons are not provided with the notice of decision or published on the EPBC Public Portal, a ‘person aggrieved’ by the decision may be able to request reasons within 28 days of the decision, or them becoming aware of the decision.¹⁷

Freedom of Information requests

You may seek to access information held by government ministers and departments under Freedom of Information Acts.¹⁸ Relevant information might include decision briefs, correspondence, and documents relied on in making a controlled action decision.

Documents released through these Acts can also be published online.¹⁹

Requests should be made as soon as possible, as processing can take several months.

Read: EDO’s factsheets on making freedom of information requests, including [Accessing Commonwealth Government Information](#).

What happens once I make a reconsideration request?

Once the Minister receives a receives a reconsideration request, they will:²⁰

1. determine whether the request is valid (if not, the process will not continue)
2. invite comments from the proponent, relevant ministers, and the public
3. reconsider the controlled action decision
4. once a decision has been made:
 - a. give written notice of the outcome to relevant parties, including the person who made the request, and publish a notice online²¹
 - b. if a new decision has been made, publish a notice of the new decision

The EPBC Act does not set a time limit for processing reconsideration requests.²²

If you receive notice of the outcome of a reconsideration decision, and no reasons are provided with the decision, you may, within 28 days of receiving the notice, ask the Minister

¹⁷ *Administrative Decisions (Judicial Review) Act 1977 (Cth)*, s 13.

¹⁸ See, for example, the [Freedom of Information Act 1982 \(Cth\)](#).

¹⁹ See, for example, [Disclosure log - DCCEEW](#).

²⁰ Policy Statement, pp 5-6. Reconsideration requests are generally processed through the Department of Climate Change, Energy, the Environment and Water.

²¹ As required under EPBC Act, s 78C(3) and EPBC Regulations, reg 4A.01. The EPBC Regulations require the notice be published on the internet and in the Gazette; and contain particular information.

²² However, “requests will be processed as soon as practicable”: Policy Statement, p 4.

to provide reasons for their decision.²³ Reasons can help to assess whether you may be able to pursue further action, including seeking judicial review of the reconsideration decision.

Evaluate this resource

EDO welcomes feedback on this legal resource. Your feedback will help us ensure we are providing useful legal information.

If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:



²³ EPBC Act, s 78C(4).

Appendix A – Template for a reconsideration request

[# Use your letterhead or insert your postal address]

[#Minister’s postal address and/or email address]

Dear Minister,

RE: Request for reconsideration of controlled action decision for [#insert description of proposed action]

I am writing on behalf of [#if applicable, insert group name, number of members and area of interest].

I write in relation to [#identify decision] (**Decision**) in relation to [#clearly reference the proposed activity/project, including EPBC number and proposal title] (**Action**).

Pursuant to section 78A of the *Environmental Protection and Biodiversity Conservation Act* (1999) (Cth) (**EPBC Act**), I request that you reconsider the Decision, as:

[#identify relevant grounds, i.e.]

- there is substantial new information available about the impacts of the Action on a matter protected under Part 3 of the EPBC Act (s 78(1)(a));
- there is a substantial change in circumstances that was not foreseen at the time of the Decision relating to the impacts of the Action on a matter protected under Part 3 of the EPBC Act (s 78(1)(aa)); [and/or]
- the Decision was made on the basis that the action would be taken in a specific manner, and the action is not being, or will not be, taken in that manner (s 78(1)(b)).]

Summary

In summary: [#include what is relevant]

The Minister should revoke and substitute the decision because [#state grounds and summarise why revoking and remaking the decision is warranted].

A new decision should identify controlling provisions related to the following matters protected under Part 3 of the EPBC Act, as the Action has will have or is likely to have a significant impact on:

- [#identify protected matter 1 and reason]
- [#identify protected matter 2 and reason]
- [#identify protected matter 3 and reason]

Background [to your request]

[#insert half a page only. Make sure that you point out any errors in the controlled action decision or other documents (e.g. reasons or Minister’s brief for the Decision).]

Grounds for reconsideration

[#where relevant detail the following sections.

For all information provided, you must include the source of the information; and details of when the information became available.

Where possible, make reference to Government statements and guidance.²⁴]

Ground 1: Substantial new information

[#must include:

- any new information that was not considered when the original decision was made; and
- information that demonstrates that a change in the potential impacts of the action is likely to happen with a high degree of certainty.]

Ground 2: Change in circumstances

[#must include information that:

- identifies the changed circumstances; and
- establishes why the circumstances were unforeseen at the time the original decision was made; and
- demonstrates that a change in the potential impacts of the action is likely to happen with a high degree of certainty.]

Ground 3: Action will not be taken in specified manner

[#must include information that establishes that the action is not being taken, or will not be taken, in the manner identified in the original decision.]

Revocation and substitution of the decision is warranted

[#detail the significant impact the action will have on each protected matter that you think are relevant to the action and should be included in a new controlled action decision]

Conclusion and Recommendations [optional]

[#Your name and contact details]

²⁴ For example, see [EPBC Act Policy Statement - Reconsideration: Implementing the requirements of sections 78, 78A, 78B and 78C of the EPBC Act](#); and [Significant Impact Guidelines 1.1 - Matters of National Environmental Significance](#).