

# Draft Environment Protection Regulations 2019: Frequently asked questions

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It may contain references to policy positions, approaches, documents or other information that has been superseded.

## General questions

### What are the environmental regulatory reforms?

The Northern Territory Government is overhauling the current environmental regulatory system. Reforms are critical to achieving a robust regulatory system that the community will trust while encouraging industry investment and economic growth. Its ultimate goal is to support sustainable development in the Northern Territory (the Territory).

A single piece of legislation is being developed to implement a reformed environmental management regulatory framework – the Environment Protection Act (the Act).

Development of the Act, and the reform program, has been separated into two stages.

The first stage will reform the environmental impact assessment process and introduce a new environmental approval that may be granted by the Minister for Environment and Natural Resources (the Minister) at the completion of the assessment process.

The second stage will reform how the Territory manages its wastes, pollution, clearing of native vegetation and the environmental impacts of mining activities.

### Why are you reforming the environmental impact assessment process?

Government, industry and the community all recognise that there is a need for reform and modernisation of the Territory's environment protection framework – particularly the process of environmental impact assessment and approval. Reviews of the Territory's Environmental Assessment Act 1982 have been conducted over the last 10 years, identifying significant failings of the environmental impact assessment system when compared to expectations of a contemporary environmental impact assessment process.

These reviews and other feedback from non-government organisations, industry and individuals identified:

- a lack of transparency in the current environmental impact assessment system particularly in respect of decision making

- uncertainty about the responsibilities of proponents, the Northern Territory Environment Protection Authority (NT EPA) and government agencies, and lengthy and uncertain timeframes for completing assessments
- inconsistency and inequity in the application of rules and processes for similar projects, different approaches and conditions for managing similar environmental impacts across different industries
- gaps in the assessment system which have meant that some major projects have not undergone assessment and approval
- other cases where the legislation under which approval is given does not provide for enforceable conditions to protect the environment
- failure and inability to take appropriate action to ensure proponents comply with environmental obligations
- a risk that agencies responsible for promoting a sector do not act with appropriate rigour to manage environmental impacts (sectoral capture).

These inadequacies all contributed to a general lack of confidence in the Territory's capacity to manage the environment, and to attract and facilitate industry investment. Government determined that a minor 'tweaking' of the existing legislation was not going to provide the 'fix' required and accordingly the Environment Protection Act 2019 was passed to put in place a contemporary environmental impact assessment and approval regime.

The Draft Environment Protection Regulations provide the detail of process to support the system of environmental impact assessment established by the Environment Protection Act 2019.

## What is the current status of the reforms?

The Government has passed the Environment Protection Act 2019 establishing the basis for the improved environmental impact assessment system and the new environmental approval.

Draft Environment Protection Regulations 2019 have been prepared and released for public consultation. The draft Regulations establish the processes for the environmental impact assessment system and other processes required to ensure the effective and efficient operation of the Act.

## Who will benefit from the environmental reforms?

Changes to the environmental impact assessment and approval process are the first major step in the reform of environmental management in the Territory.

These changes are aimed at delivering ecologically sustainable development so that all the benefits that come from our amazing natural environment can continue to support the things we truly care about – our lifestyle, our industries and our opportunities for economic development and job growth.

## Environmental impact assessment

### Why have an environmental impact assessment process?

The purpose of an environmental impact assessment system in the Territory is to make sure that proposed actions do not have an unacceptable impact on the environment, now and into the future. Proposed actions include any project, development, undertaking, activity and works, referred to in this document as 'projects'.

## Who is responsible for conducting the environmental impact assessment of a project?

The NT EPA is responsible for overseeing the environmental assessment of all proposed actions. It has been given powers to make sure a project with the potential for significant impact does not proceed without being subject to a review by the NT EPA.

The NT EPA carries out an environmental impact assessment in accordance with the Regulations.

The proponent is responsible for preparing material to be used in an assessment process and is responsible for ensuring that appropriate community consultation is undertaken with potentially impacted communities.

## How is the proposed impact assessment process different from the current environmental impact assessment (EIA) process?

There are a number of differences between the current assessment process and the process outlined in the Regulations.

Key differences include:

- clear referral pathways for when a project is to be referred to the NT EPA by a proponent
- tiered methods for environmental impact assessment determined by the NT EPA based on the complexity of the project and other key aspects
- ability to conduct environmental impact assessments at a broader landscape or regional scale (known as strategic assessments)
- increased public involvement and transparency
- clear timeframes for each part of the assessment process.

## What is strategic environmental assessment?

Strategic environmental assessments can be used to support strategic planning (e.g. detailed community plans), development of policy or allow for assessment of cumulative impacts within a location.

A strategic environmental assessment can be location/region/catchment based, industry-specific based or issue based. The NT EPA may accept a referral for strategic assessment if it considers it appropriate to do so.

The NT EPA may suggest to a proponent or the Minister that a particular location or group of industry developments would benefit from a strategic assessment, however the NT EPA cannot direct a proponent to conduct a strategic assessment.

## What are the stages of environmental impact assessment (and approval)?

The environmental impact assessment and approval system has five stages:

1. Pre-referral – proponent makes a self-assessment on whether their project requires referral and consults with potentially impacted communities.
2. Referral – the NT EPA identifies whether an environmental impact assessment, and the level of assessment, is required.

3. Environmental impact assessment – there are four methods or tiers of assessment dependent 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 with appropriate conditions.
5. Post environmental approval – the proponent (environmental approval holder) must comply with the conditions of the environmental approval. The CEO is responsible for monitoring compliance with the conditions and undertaking enforcement action where necessary.

## How is a project referred to the NT EPA?

Proponents must refer a project if it has the potential to have a significant impact on the environment or if it meets a referral trigger.

The Act provides for the development of environmental objectives to inform judgements of significant impact and establishes powers for two types of referral triggers. The draft Regulations identify the processes that must be followed by the Minister when developing objectives or triggers.

The NT EPA may refuse to accept a referral if it contains insufficient information to enable an assessment decision, or if the NT EPA considers it does not need to be referred.

The draft Regulations require the NT EPA to publish the accepted referral for public comment before the NT EPA makes a decision on assessment. The NT EPA is also required to publish all public submissions received during an assessment process subject to any requests to withhold from publication or removal of any identifying information.

## What are the different methods of environmental impact assessment?

The draft Regulations identify four different methods of assessment that reflect the NT EPA’s information requirements and significance of the project:

1. Assessment on referral information. This form of assessment is where the NT EPA is able to prepare an assessment report (that is, a report of its findings and advice to the Minister on whether to issue an environmental approval) based on the original referral and any further information provided as part of the acceptance of the referral.
2. Assessment on supplementary environmental report. This form of assessment is where the NT EPA is able to prepare an assessment report based on the original referral, any further information provided as part of the acceptance of the referral, and a supplementary environmental report prepared by the proponent.
3. Assessment by environmental impact statement (EIS). This form of assessment substantially mirrors the current impact assessment process.
4. Assessment by inquiry – this is for high risk actions where traditional paper based approaches may not provide the necessary level of consultation or confidence.

In addition, the draft Regulations provide for a modified “proponent initiated EIS” process which will allow proponents to develop their own draft terms of reference for an EIS and submit these to the NT EPA with its referral information. This will enable proponents to take a more active role in the impact assessment process and reduce the overall assessment timeframe without compromising environmental outcomes.

The draft Regulations also enable the NT EPA to use the assessment by inquiry process in conjunction with any other form of impact assessment where it considers this is appropriate.

## How will the method of assessment be determined by the NT EPA?

Following consultation with relevant government authorities and considering submissions received during the referral's submission period, the NT EPA decides on the method of assessment.

The assessment method chosen will be based on; a project's complexity, risks and potential impacts on the environment; the level of certainty in assessing those risk and impacts; and the quality of information provided in the referral information.

## How will significant impact be determined?

The Act defines the meaning of significant impact as having regard to its context or intensity. When assessing for significance, the NT EPA would take into account the sensitivity, value and quality of the environment impacted on and the intensity, duration, magnitude and geographic extent of the impact.

## What is a statement of unacceptable impact?

At the conclusion of the environmental impact assessment, the NT EPA may provide the Minister with a statement of unacceptable impact with the final assessment report if it considers the action will have unacceptable environmental impact.

If the Minister accepts the statement of unacceptable impact, the Minister will refuse to grant an environmental approval. The Minister must publish a statement of reasons for refusing an approval which may refer to the statement of unacceptable impact.

## Current projects, changes and variations

### How will the changes impact current projects going through approval?

Projects that have already completed an environmental impact assessment process and are operating under existing authorisation requirements are not required to seek an environmental approval under the new legislation.

Projects that are currently being assessed will be transitioned into the new process at the next available point. For example, a project that has completed a draft environmental impact statement (EIS) but has not yet submitted a supplement, will be required to publish the supplement for public comment and the

NT EPA will prepare a draft environmental approval to accompany its assessment report.

Projects that complete the environmental impact assessment process after the Act begins will be required to hold an environmental approval.

Special circumstances will apply to those projects that have recently completed the impact assessment process (which requires the NT EPA to have provided an assessment report prepared under the Environmental Assessment Act 1982 to the Minister) but which have not started.

## What happens if a referred project changes during the environmental impact assessment process?

A proponent who has referred a project to the NT EPA must provide notice to the NT EPA if significant changes have been made to their project (a significant variation) that may alter the assessment of environmental impacts or risks of the project.

Similar to the initial referral process, proponents are responsible for determining whether the changes to their project may require referral. The NT EPA may also use its power to 'call-in' a project if it believes the project has changed to the extent that it may alter the environmental impacts or risks.

These provisions will be used for significant changes to the project. It is normal for some changes to be made to projects during the assessment process as additional information and community feedback is received on the project.

If an assessment decision has not been made, the amended action provided by the proponent replaces the original referral and the NT EPA continues the referral process.

If an assessment decision and method of assessment has been determined, the NT EPA will follow a similar process of publishing the notice and obtaining additional information to assist in making a decision.

The NT EPA will then decide whether the variation changes the risk profile (and therefore the significant impacts) of the project, and whether an assessment is still required. If the NT EPA decides an impact assessment is still required, it may reconsider the method of assessment or any terms of reference already prepared. The NT EPA will publish all of its decisions, along with a statement of reasons.

The draft Regulations specify processes to ensure that notices of variation are managed in a transparent manner. Different processes are identified depending on when the notice is submitted during the impact assessment process.

## Timeframes and your legal rights

### What are the statutory timeframes for decisions?

All stages of the assessment and approval process include statutory timeframes for decision making. There will be a maximum timeframe in which the Minister or NT EPA can make a decision.

The draft Regulations specify a set timeframe for most public consultation opportunities. This timeframe can be extended by agreement between the proponent and NT EPA. The timeframe for seeking comments on a draft environmental impact statement will be identified by the NT EPA based on the nature of the project, its complexity and potential environmental impacts. The NT EPA must set a timeframe between 30 and 60 business days.

### What happens post environmental approval?

Once an environmental approval is issued, the approval holder must comply with the conditions of the approval. The CEO has responsibility for ensuring compliance with approval conditions, and undertaking enforcement action when necessary.

## Can decisions be reviewed and appealed?

There are two types of processes that allow a person affected by a decision to appeal the decision:

- judicial review: considers whether a decision was made following the correct legal procedure
- merits review: considers whether the decision was 'right' taking into account the relevant circumstances.

Judicial review applies to all decisions made under the Act. People who can seek the judicial review are:

- proponents and applicants
- persons who are directly affected by the decision
- persons who made a genuine and valid submission during any assessment or approval process.

Merits review applies to decisions made by the CEO or an environmental officer. The person who can seek a merits review is the person directly affected by the decision, usually the applicant or person issued with a direction or notice under the Act.