

**GUIDE TO THE ENVIRONMENTAL IMPACT
ASSESSMENT PROCESS IN THE NORTHERN
TERRITORY**

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Acronyms & Definitions

EA Act	<i>Environmental Assessment Act</i>
EAAP	Environmental Assessment Administrative Procedures
EAU	Environmental Assessments Unit
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
MNES	Matters of National Environmental Significance
NT	Northern Territory
NT EPA	Northern Territory Environment Protection Authority
PER	Public Environmental Report
the Minister	The Minister of Lands, Planning and the Environment
ToR	Terms of Reference
<i>Advisory bodies</i>	<i>Advisory bodies, in respect of a proposed action means the Agencies, if any, having administrative responsibilities in respect of the proposed action.</i>
<i>Ecologically sustainable development</i>	<i>Using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life now and in the future can be increased.</i>
<i>Environment</i>	<i>All aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects.</i>
<i>Proponent</i>	<i>Person, organisation or Agency responsible for the development and execution of a proposed action.</i>
<i>Proposed action</i>	<p>(a) <i>the formulation of proposals;</i></p> <p>(b) <i>the carrying out of works and other projects;</i></p> <p>(c) <i>the negotiation, operation and enforcement of agreements and arrangements (including agreements and arrangements with, and with authorities of, the Commonwealth, the States and other Territories);</i></p> <p>(d) <i>the making of, or the participation in the making of, decisions and recommendations; and</i></p> <p>(e) <i>the incurring of expenditure,</i></p> <p><i>by, or on behalf of, a person, either alone or in association with another person.</i></p>
<i>Responsible Minister</i>	<i>In relation to a proposed action, the Minister primarily responsible for authorising the proposed action.</i>

1 Introduction

The purpose of this guide is to explain the Environmental Impact Assessment (EIA) process in the NT, and to outline how it may affect proposed new projects. The Northern Territory Environment Protection Authority (NT EPA) is responsible for administering the *Environmental Assessment Act* (EA Act) and the subordinate Environmental Assessment Administrative Procedures (EAAP), the key legislation used to perform the EIA of proposed actions in the NT.

The primary purpose of the EIA process is to provide for appropriate examination of proposed projects that may cause significant environmental impact. The EIA process provides Government, proponents and public stakeholders with the information needed to consider and make decisions on matters that could significantly affect the environment. It enables environmental issues to be considered in a balanced way with other aspects involved in determining the acceptability of a proposed action. It ensures that unnecessary and unacceptable harm to the environment can be avoided.

The EIA process helps ensure that potential environmental impacts and potential risks are addressed at an early stage early in the planning and design of a proposed action, and proposals are designed in accordance with the principles of ecologically sustainable development.

Proposed actions that may have a significant impact on the environment are to be referred to the NT EPA to determine whether the proposed action requires EIA under the EA Act. The EA Act applies to public and private projects and is concerned with land use and development decisions. The requirement for EIA may apply in situations where a project, previously the subject of assessment, is subsequently altered in such a way that it substantially changes the environmental significance of that project. Similar circumstances apply where major modifications or expansions are proposed for current projects where these changes are likely to result in a significant effect on the environment.

2 Roles and Responsibilities

2.1 Northern Territory Environment Protection Authority

The NT EPA is responsible for administering the EA Act and EAAP. The NT EPA consists of a board made up of six members, including the Chair of the NT EPA, the Chair of the Planning Commission and four other members appointed by the NT Administrator. The NT EPA considers the proponent's documentation, public input, and advice from advisory bodies to make informed decisions and recommendations on proposed actions that may cause significant environmental impact.

The Department of Lands, Planning and the Environment provide staff of the Environmental Assessments Unit (EAU) to the NT EPA to enable it to undertake its functions. The EAU are primarily responsible for supporting the NT EPA's administration of the EA Act and EAAP.

2.2 Proponent

The proponent of a proposed action to which the EA Act may apply is required to notify the responsible Minister (e.g. for a mine, the Minister for Mines and Energy) who in turn provides the NT EPA with a notification of the proposed action and the details of the proponent. The NT EPA, after receiving notification may direct the proponent to provide further information to assist in determining the level of assessment under the EA Act.

Proponents of proposed actions are responsible for preparing the:

- Notice of Intent;
- EIA documents; and
- Further information (if required).

2.3 The Minister and the Responsible Minister

The NT EPA provides notices on the decision on the level of assessment and the assessment report for specific proposals to the Minister. The Minister is required to provide the notices and the assessment report to the responsible Minister, together with any written comments made by the Minister in relation to the assessment report. The responsible Minister, taking into consideration the assessment report, will then make a determination as to whether or not an approval under the relevant legislation will be issued to the proponent for the project and if so, the conditions that may be applied.

The Minister and responsible Minister are required to notify the NT EPA of any comments or decisions made in relation to the assessment report. Should the comments or decisions be contrary to the outcomes of the EIA process, the notice must outline reasons and be tabled in the Legislative Assembly.

2.4 Australian Government

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's key piece of environmental legislation. Approval under the EPBC Act may be required from the Australian Government Minister for any proposed action likely to have a significant impact on a matter protected by the EPBC Act. The environment assessment process of the EPBC Act protects Matters of National Environmental Significance (MNES), including:

- World Heritage properties;
- National Heritage Places;
- Wetlands of international importance;
- Nationally threatened animal and plant species and ecological communities;
- Internationally protected migratory species;
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mines); and
- a water resource, in relation to coal seam gas development and large coal mining development.

The EPBC Act also protects:

- the environment, where actions proposed are on, or will affect Commonwealth land; and
- the environment, where Commonwealth agencies are proposing to take an action.

There are significant penalties, including fines and imprisonment, for taking such an action without approval under the EPBC Act. It is the proponent's responsibility to make a referral as early as possible in the planning and development stages of a proposed action that is likely to have a significant impact on a matter protected by the EPBC Act. Further information on the EPBC Act and referral information can be found at:

<http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999>

The EIA processes of the NT and Australian Governments are conducted independently until a decision is made to undertake a bilateral or accredited assessment, whereby the Australian Government delegates its EPBC Act assessment responsibilities to the NT Government.

It is important to note that NT and Australian Governments have independent notification procedures. However, concurrent referrals of proposed actions are encouraged into both the Australian and NT EIA processes, where applicable, to facilitate a smooth transition if the bilateral or accredited assessment comes to be applied, and avoid unnecessary duplication of processes. While the NT EPA encourages proponents to refer their actions under the EPBC Act, it will not accept any responsibility in cases where proponents choose not to refer.

3 Notice of Intent

The initial notification of a proposed action to the NT EPA is known as a Notice of Intent (NOI). The NOI provides essential details of the proposed action to assist in determining whether assessment under the EA Act is required.

Under the EA Act the NT EPA has the power to request a NOI for a project if it is deemed to be of a scope and scale, and/or has the potential to result in a significant environmental impact, which requires further assessment. The NT EPA has prepared a series of Environmental Assessment Guidelines to explain when development proposals under the *Planning Act*, *Pastoral Land Act*, *Mining Management Act* or *Petroleum Act* will not require a NOI or referral under the EA Act. These guidelines should be consulted for industry or development-specific information.

The NT EPA may receive notification through the application processes of other NT Government approvals, such as applications for development consent or land clearing, which may be circulated directly to the NT EPA. Applications referred are assessed as a NOI.

The NT EPA has prepared the *Guidelines for preparing a notice of intent* to provide information on project scoping in NOI documents. The NT EPA is able to request further information if the information contained in an NOI is insufficient to allow an informed decision to be made on the environmental significance of a proposed action.

The NT EPA has a strong preference for proponents to refer an entire proposed action to the NT EPA, rather than referring components of a proposal in separate stages. For example, if a proposed action includes the development of a mine site, construction of infrastructure such as a pipeline or railway and construction of a port facility, the proponent should include all of these components in its description of the proposal in the one NOI to the NT EPA. This allows for a more complete assessment of the impacts of the proposal, saves time and resources required to assess separate components related to the same proposal at a later date, and may result in fewer changes to the proposed action after the assessment report has been issued.

4 Decision on the Level of Assessment

Once a NOI is received by the NT EPA, a decision is required in the first instance on whether the proposed action could have a significant effect on the environment. The NOI is examined in relation to:

- potentially significant environmental impacts, particularly the type, magnitude, duration, frequency and extent of impacts;

- the significance and sensitivity of the surrounding biophysical environment;
- processes inherent in the proposed action and related inputs and outputs/discharges,
- potential for on-site or off-site effects on the environment; and
- issues such as statutory planning, heritage, public health, water resources, water quality and resource management.

The decisions on whether assessment is required and the level of assessment are made by the NT EPA following consultation with relevant advisory bodies. Advisory bodies consider the information provided by the proponent, determine the level of risk that may be posed by the proposed action and identify whether the proposed mitigation measures are sufficient and appropriate. Advice from advisory bodies can assist the NT EPA with assessing whether proposed management actions are likely to be sufficient for addressing identified risks.

A Public Environmental Report (PER) is called for to assist in assessing environmental impacts which are considered significant but limited in extent. It is not a precursor to an EIS.

Key points on a PER:

- single or limited number of environmental issues; and
- limited magnitude, duration, frequency and extent of impacts.

An Environmental Impact Statement (EIS) is called for to assist in assessing environmental impacts which are considered significant either in terms of site specific issues, off-site issues and conservation values and / or the nature of the proposed action.

Key points on an EIS are:

- number of environmental issues;
- greater magnitude, duration, frequency and extent of impacts;
- proposal affected by international, national or State / Territory legislation or treaties for the protection of natural habitats, flora and fauna;
- proposal has potential for significant environmental risk or hazard to adjacent users or uses; and
- proposal has potential for significant environmental impact to occur.

The NT EPA notifies the Minister and proponent that a proposed action will be assessed at the level of a PER or an EIS under the EA Act.

If the proposed action is considered to not involve a significant impact on the environment, the NT EPA will notify the proponent and Minister that, subject to clause 14A of the EAAP, the assessment is at an end. The decision and recommendations from the review of the NOI are generally forwarded to the proponent, and where necessary, the responsible Minister, for consideration in the approval and licensing conditions, if appropriate.

5 Terms of Reference

The NT EPA prepares the Terms of Reference (ToR), initially as a draft, to define the matters relating to the environment which the proponent shall deal with in the PER or the EIS. The NT EPA exhibits the draft ToR for public and advisory body comment and review for a period of 14 days. At the close of this period, the EAU takes into consideration any public comments and advice from relevant advisory bodies and finalises the ToR for approval by the NT EPA.

The ToR are written to guide the proponent to identify, define and address environmental risks associated with the proposed action and to set the scope of environmental studies (within the meaning of the EA Act) required to allow for an assessment and decision on the appropriateness of the proposed action.

The ToR are made available to the public on the NT EPA website.

6 Public Exhibition

The proponent prepares the PER or EIS in accordance with the ToR and NT EPA direction. There is no statutory timeframe in which the proponent is to prepare the PER or EIS, unless specified by the NT EPA.

The proponent exhibits the PER or draft EIS for public review and comment. The public exhibition period provides an opportunity for the public and Government to comment on the proposal or specific environmental issues of concern. Invitation for public comment is advertised in various media by the proponent and copies of the PER or draft EIS are placed on display at relevant public places, as well as on the NT EPA website.

It is the proponent's responsibility to advertise that the PER or draft EIS is available for public comment and to supply and display the document at relevant public places. The NT EPA requires the PER or draft EIS documents and a draft of the advertisement at least one week prior to start of the exhibition period. This allows for web upload of the document and review and comment on advertising text.

The period for public review and comment on a PER is normally 28 days, and for a draft EIS a minimum of 28 days. The exhibition period should not occur in late December or January in any year to ensure optimal opportunity for public and advisory body viewing of the document. Additional time will be added to the exhibition period if the EIS exhibition overlaps any late December and January periods.

7 Finalisation of the Environmental Impact Assessment Process

7.1.1 Public Environmental Report

Two PER process streams exist, depending on whether or not the proposed action is determined to be a controlled action under the EPBC Act.

7.1.1.1 PER – Northern Territory Environment Protection Authority Assessment

The NT EPA undertakes the EIA process in accordance with the EAAP where the bilateral assessment does not apply to the PER process.

The NT EPA may call for further information from the proponent during the public exhibition period for the PER, if the information provided in the PER is deficient in some aspect of the description of the proposal and environmental discussion is insufficient. Any further information submitted will be circulated to relevant advisory bodies for comment.

After the PER exhibition period, or submission of any requested further information, the EAU prepares a draft assessment report and recommendations for consideration by the NT EPA.

The NT EPA approves the assessment report and provides it to the Minister and the proponent. The Minister provides the report to the responsible Minister. The assessment report summarises the findings of the EIA process and provides recommendations for matters to be addressed in environmental management procedures and approval conditions.

7.1.1.2 PER – Northern Territory Environment Protection Authority and Australian Government Assessment

The NT EPA undertakes the EIA process in accordance with the EAAP and requirements under the EPBC Act where the bilateral assessment does apply to the PER process. The proponent is required to address all issues raised in comments submitted on the PER in a Supplement to the PER. The proponent prepares the Supplement and submits it to the NT EPA. The Supplement is circulated to advisory bodies for review and comment.

The NT EPA may call for further information from the proponent if the PER and Supplement are deficient in some aspect of the description of the proposal and environmental discussion.

The EAU prepares a draft assessment report and recommendations for consideration by the NT EPA following the submission of the Supplement, or submission of any requested further information.

The NT EPA approves the assessment report and provides it to the Minister and the proponent. The Minister provides the report to the responsible Minister. The assessment report summarises the findings of the EIA process and provides recommendations for matters to be addressed in environmental management procedures and approval conditions.

The assessment report is provided to the Australian Government where the bilateral assessment applies, or assessment is otherwise occurring under the EPBC Act.

7.1.2 Environmental Impact Statement

Submissions from the public and advisory bodies on the draft EIS are made available to the proponent, who addresses the issues raised in the form of a Supplement to the draft EIS. The proponent prepares the Supplement and submits it to the NT EPA. The Supplement is circulated to advisory bodies for review and comment.

The NT EPA may call for further information from the proponent if the draft EIS and Supplement is deficient in some aspect of the description of the proposal and environmental discussion. This information is further circulated by the EAU to relevant advisory bodies for comment.

The EAU prepares a draft assessment report and recommendations for consideration by the NT EPA following the submission of the Supplement, or submission of any requested further information.

The NT EPA provides the assessment report to the Minister and the proponent. The Minister provides the report to the responsible Minister. The assessment report summarises the findings of the EIA process and contains recommendations for environmental management of potential impacts potentially caused by the proposal

Where the bilateral or accredited assessment applies, or assessment is otherwise occurring under the EPBC Act, the assessment report is provided to the Australian Government.

8 Timelines

The timeline reflects the complexity of the proposed action, the environmental factors, the form of environmental review required, the time of year for conducting the environmental review and the capacity of the proponent to address the requirements of the EIA process. The timeline is influenced by the quality and relevance of any studies and investigations that have been conducted prior to the proposed action being referred to the NT EPA.

Early consultation and close cooperation with the NT EPA is advised so that the EIA process is timely and effective. Early consultation assists by:

- ensuring early studies are made of environmental issues which can contribute to preparation of the PER or EIS and appropriate design of the proposal; and
- guiding the proponent through the process and therefore minimising the need for additional information requests late in the process.

The generic timelines for the EIA process at the level of a PER and an EIS are illustrated at Table 1 and 2, respectively.

Table 1. Common timeline for the assessment of a Public Environmental Report

	Action	Timing
1.	Proponent notifies the responsible Minister of the proposed action.	Open
2.	Responsible Minister notifies the NT EPA of the proposed action.	Open
3.	NT EPA may require further information from proponent to assist in determining the level of environmental significance of the proposed action.	within 14 days
4.	NT EPA determines the level of assessment and notifies the Minister and proponent that a PER is necessary.	Open
4a.	<i>There may be a requirement for Australian Government input on type and level of assessment under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). If the proposed action is determined to be a controlled action, it is likely to be assessed under the bilateral agreement between the NT and Australian Governments.</i>	
5.	Draft Terms of Reference for the preparation of a PER are prepared by the NT EPA.	Open
6.	Draft Terms of Reference available for public and advisory body comment.	Within 14 days* <i>*Timeline will be determined by the NT EPA and the Australian Government if the assessment is under the bilateral agreement.</i>

7.	NT EPA finalises draft Terms of Reference, issues Terms of Reference to the proponent and directs the preparation of a PER.	Within 14 days
8.	Proponent prepares PER and submits to the NT EPA (<i>and Australian Government if PER bilateral</i>).	Open (unless specified by the NT EPA)
9.	PER open for public and advisory body exhibition and comment.	Not more than 28 days* <i>*Timeline will be determined by the NT EPA and the Australian Government if the assessment is under the bilateral agreement.</i>
9a.	NT EPA can request further information during the exhibition period. If further information is requested, the assessment clock stops until the information is received.	
9b.	<i>If PER is undertaken under an agreement between the NT and Australian Governments, the public and advisory body comments are forwarded to the proponent. The proponent prepares a Supplement to the PER and submits it to the NT EPA.</i> <i>The NT EPA can request further information after Supplement submitted. Assessment clock stops until the information is received.</i>	
10.	NT EPA prepares the assessment report and recommendation based on PER and further information, if requested. NT EPA provides assessment report to the Minister.	Within 14 days of expiration of the exhibition period or further information submission* <i>*Within 28 days of Supplement delivery or further information submission if the assessment is under the bilateral agreement.</i>
10a.	<i>NT EPA provides the assessment report to the Australian Government for consideration under the EPBC Act, if the assessment is under the bilateral agreement.</i>	

Table 2. Common timeline for the assessment of an Environmental Impact Statement

	Action	Timing
1.	Proponent notifies the responsible Minister of the proposed action.	Open
2.	Responsible Minister notifies the NT EPA of the proposed action.	Open
3.	NT EPA may require further information from the proponent to assist in determining the level of environmental significance of the proposed action.	Within 14 days
4.	NT EPA determines the level of assessment and notifies the Minister and proponent that an EIS is required.	Open
4a.	<i>There may be a requirement for Australian Government input on type and level of assessment under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). If the proposed action is determined to be a controlled action under the EPBC Act it is likely to be assessed under a bilateral or accredited assessment process.</i>	
5.	Draft Terms of Reference for the preparations of an EIS are prepared by the NT EPA.	Open
6.	Draft Terms of Reference available for public comment and referred to advisory bodies.	14 days
7.	NT EPA finalises draft Terms of Reference, issues Terms of Reference to the proponent and directs the preparation of a draft EIS.	Within 14 days
8.	Proponent prepares draft EIS and submits to the NT EPA.	Open (unless specified by NT EPA)
9.	Draft EIS open for public and advisory body exhibition and comment.	Not less than 28 days
10.	Public and advisory body comments forwarded to proponent.	ASAP
11.	Proponent prepares Supplement to draft EIS and submits Supplement to NT EPA (date can be determined by the NT EPA).	Open
12.	Supplement to draft EIS circulated to advisory bodies for comment.	Within 14 days
13.	NT EPA can request further information. If further information is requested, the assessment clock stops until the information is received.	Within 21 days of Supplement receipt
14.	NT EPA prepares the assessment report based on draft EIS, Supplement and comments received (NT EPA can extend period). NT EPA provides assessment report to the Minister.	Within 35 days of Supplement or further information receipt
14a.	<i>NT EPA provides the assessment report to the Australian Government for consideration under the EPBC Act, if the NT EPA undertakes the assessment on behalf of the Australian Government.</i>	Open

9 Public Register

The concluding step in the EIA process is the placement of the assessment report on the Public Register, which is available on the NT EPA website. The Public Register includes a current list of proposals that have been assessed under the EA Act, which include links to the full set of EIA documents, where possible.

10 Alterations to a Proposed Action

The proponent is required to ensure that the proposed action is implemented in accordance with the environmental commitments and safeguards identified in the EIA documents and recommendations in the assessment report. The proponent is responsible for notifying the NT EPA and the responsible Minister of any changes to the proposed action, in accordance with clause 14A of the EAAP.

11 Limitations

This guide is:

- confined to generic matters relating to EIA process and does not address more proposal-specific issues that may be of significance;
- not an instrument for predicting outcomes of deliberations by the NT EPA;
- designed to promote a more certain and consistent approach to assessments; and
- intended to apply to proposed actions prior to the proponent submitting the proposed action to NT EPA for environmental assessment.

The NT EPA has prepared this document in good faith, exercising all due care and attention, but no representation or warranty, express or implied, is made as to the relevance, completeness or fitness for purpose of this document in respect of any particular user's circumstances. Users of this document should satisfy themselves concerning its application to their situation and, where necessary, seek expert advice.

12 Further Information

All documents submitted to the NT EPA in accordance with the EA Act and further information queries should be directed to the EAU. Physical submissions to the NT EPA Office should be during opening hours between 8 am and 4 pm.

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