

10 key scenarios

What happens when the EP Act amendments and new procedures suite commence?

1 I have a new project which might have a significant effect on the environment

- The EPA's new procedure suite will apply to your project. The procedures suite calls projects "proposals".
- Consider the EPA's guidance on whether your proposal is likely to be significant - see the EPA's Statement of Principles
- Consider all the elements of your proposal which have the potential to have a significant effect on the environment, including infrastructure needs. Proposals cannot be split up into separate parts for approval purposes – the EPA needs to be able to assess the proposal as a whole
- Prepare for pre-referral meeting by considering:
 - Proposal alternatives
 - Proposal options to avoid impacts
 - Proposal options to minimise impacts
 - Likely environmental impacts
 - What environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
- Consider engaging with other government agencies and stakeholders

2 I have a new proposal that I want to refer to the EPA

- The EPA's new procedure suite will apply to your proposal
- Prepare referral document by considering:
 - Proposal alternatives
 - Proposal options to avoid impacts
 - Proposal options to minimise impacts
 - Likely environmental impacts
 - Significance of likely impacts
 - What environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
- Prepare "Proposal" content document
 - Include all elements of your proposal, including infrastructure needs
- Liaise with government agencies about whether their processes can mitigate the specific environmental impacts of your proposal, and include this in the referral

3 My proposal is being formally assessed, I am in the ESD (Environmental Scoping Document) setting stage

- The EPA's new procedure suite will likely apply to your project. Liaise with the EPA if you believe the new procedure suite should not apply.
- The ERD (Environmental Review Document) instructions now sets out the mandatory requirements of all ERDs, these will apply to your project (so there is no need to repeat them in the ESD)
- Prepare scoping document focussing on the specific information which is needed for your project
- You cannot make changes to your proposal in the ESD. If you need to make proposal changes, seek approval under section 43A of the EP Act.
- Be aware the EPA has the power to require additional information outside the ESD if it needs this to assess your proposal. To avoid the EPA needing to require this extra step, make sure the ESD is comprehensive and will meet the EPA's assessment needs.

4 My proposal is being formally assessed, I am in the ERD phase

- The EPA's new procedure suite will likely apply to your project. Liaise with the EPA if you believe the new procedure suite should not apply.
- Continue to prepare the ERD in accordance with your ESD
- The ERD instructions now sets out the mandatory requirements of ERD, these will apply to your project. Liaise with the EPASD if these requirements are inconsistent with your ESD.
- Prepare ERD by considering:
 - Proposal alternatives
 - Proposal options to avoid impacts
 - Proposal options to minimise impacts
 - Likely environmental impacts
 - Significance of likely impacts
 - What environmental outcomes you aim to achieve (and whether these are consistent with the EPA's objectives for environmental factors)
 - If there are likely to be any significant impacts and you are proposing offsets, include assessment of whether the offsets are likely to counter-balance the significant residual impact
- Continue consultation processes
- Liaise with government agencies to establish whether their processes can mitigate the specific environmental impacts of the proposal
- You cannot make changes to your proposal in the ERD. If you need to make proposal changes, seek approval under section 43A of the EP Act.

5 I want to carry out minor and preliminary works, what should I do

- The EP Act amendments have not changed the statutory process for this, but the EPA has clarified that minor or preliminary works cannot be approved if:
 - The works which would involve substantial commencement of the proposal
 - The works would be of a scale or significance that would compromise the EPA’s assessment or the Minister’s future decisions
- Use the section 41A instructions to prepare an application for the works
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the minor and preliminary works
- If you are seeking approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), note that there is no similar power approve minor and preliminary works under the EPBC Act

6 I am in the assessment phase and have some proposal amendments I want to make

- Proposal amendments cannot be made through an ESD or ERD
- Use the new section 43A instructions to complete an application.
- Once the EP Act amendments to section 43A come into force (currently expected 1 August 2021), they will apply to any applications submitted since 3 February.
- Consider:
 - Proposal change alternatives
 - Proposal change options to avoid impacts
 - Proposal change options to minimise impacts
 - Likely environmental impacts, including when combined with existing proposal likely impacts
 - Significance, including when combined with existing proposal impacts
 - What environmental outcomes you aim to achieve (and whether these are consistent with the EPA’s objectives for environmental factors)
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the changes to the proposal
- Consult with other stakeholders if they are relevant to the amendment you’re seeking

7 I want to make a change to my existing approved proposal

- The Minister (or EPA Chair under delegation, if the Minister decides to delegate her power) will have the power to approve changes to existing approved proposals (and conditions) under 45C, as long as the changes are not “significant amendments”
- The EP Act amendments to section 45C will only apply to applications which are submitted after the amendments are in force (currently expected 2 August 2021)
- Significant amendments are:
 - For existing approved proposals – proposal amendments which are likely to have a significant effect on the environment;
 - For existing approval conditions – condition amendments which mean the proposal is likely to have a significant detrimental effect on the environment in addition to, or different from, the existing approved proposal.
- Use the Change to Approved Proposal instructions to prepare an application
- Prepare a Content of proposal document for your existing approved proposal, and show the changes you are seeking
 - Include references to proposal content from original referral documents and changes approved since then
- Consider:
 - Proposal change alternatives
 - Proposal change options to avoid impacts
 - Proposal change options to minimise impacts
 - Likely environmental impacts, including when combined with your existing approved proposal likely impacts
 - Significance, including when combined with your existing approved proposal impacts
 - What environmental outcomes you aim to achieve (and whether these are consistent with the EPA’s objectives for environmental factors)
- Provide information about compliance status and environmental performance of existing approved proposal
- Consult with other stakeholders if they are relevant to the amendment you’re seeking
- Liaise with government agencies to establish whether their processes can mitigate the environmental impacts of the changes
- If you are only seeking a change to your proposal – consider whether the existing approval conditions might need to change too, and include this in the application. (If you don’t, the EPA may not be able to approve your application).
- If the proposal change is not approved under section 45C, you can make an application for the change to be considered as a significant amendment – see scenario 8.
- If the condition change is not approved under section 45C, you can make an application for the change to be considered under section 46 of the EP Act. To do this, you need to apply to the Minister to ask the EPA to inquire into your conditions.
 - The Minister also has the power to agree with other decision-making authorities that the proposed condition amendment needs to be referred as a significant amendment – see scenario 8 below

8 I want to do a significant proposal expansion or make a significant change to my existing approved proposal or conditions

- Once the EP Act amendments come into force (currently expected 2 August 2021), they will apply to any revised proposals submitted since 3 February.
- Significant expansions, proposal changes and condition changes are likely to be “significant amendments” to approved proposals.
- Significant amendments are:
 - For existing approved proposals – proposal amendments which are likely to have a significant effect on the environment
 - For existing approval conditions – condition amendments which mean the proposal is likely to have a significant detrimental effect on the environment in addition to, or different from, the existing approved proposal.
- Significant amendments need to be assessed by the EPA in the context of the approved proposal. The impacts of the significant amendment can’t be considered alone.
- The EPA has to have regard to the combined effect of the approved proposal and the significant amendment. It can’t consider the impacts of the significant amendment alone.
- The EPA can review the existing approval conditions when considering a significant amendment.
- Significant amendments to proposals need to be referred as new proposals under section 38 of the EP Act
- Significant amendments to conditions may be able to be considered under 46 of the EP Act. You need to apply to the Minister to ask the EPA to inquire into your conditions.
 - The Minister also has the power to agree with other decision-making authorities that the proposed condition amendment needs to be referred as a new referral.

9 I am a third party and want to refer a proposal

- The EPA requests the referral include as much information as possible about the proposal and whether it is likely to have a significant effect on the environment
- The EPA needs sufficient information about the proposal to decide whether or not to assess it
- The EPA needs information about:
 - The proposal content
 - Likely environmental impacts
 - Likely environmental outcomes
 - Whether other government agencies can (or cannot) mitigate the potential environmental effects of the proposal on the environment

10 I want to understand why the EPA made a decision

- EPA decision whether to assess (38G)
 - See the public record of the EPA decision on the EPA website
- EPA decision to approve change to proposal during assessment (s 43A EP Act)
 - The EPA will provide a summary of reasons for its decision on the EPA website
- EPA report and recommendation on a proposal (s 44 EP Act)
 - See the EPA report for the proposal on the EPA website
- EPA decision (under delegation, if provided by the Minister) to approve change to approved proposal (s 45C EP Act)
 - The EPA will provide a summary of reasons for its decision on the EPA website
- EPA decision (under delegation) to approve change to condition (s 45C EP Act)
 - The EPA will provide a summary of reasons for its decision on the EPA website

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