

Major Project Development Assessment Processes

Productivity Commission Inquiry

Submission from the Department of Sustainability, Environment, Water, Population and Communities

Introduction

The Australian Government Department of Sustainability, Environment, Water, Population and Communities (the department) welcomes the opportunity to make a submission regarding the Productivity Commission's Inquiry into major project development assessment processes.

The department has portfolio responsibilities in administering regulatory provisions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act, which commenced on 16 July 2000, is the government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, heritage places and Commonwealth marine areas - defined in the EPBC Act as matters of national environmental significance. Matters of national environmental significance are: World Heritage, National Heritage, Wetlands of International Importance (Ramsar wetlands), threatened species and communities, migratory species, nuclear actions, the Commonwealth Marine Area, and the Great Barrier Reef Marine Park. Other protected matters include (i) the environment, where actions proposed are on, or will affect Commonwealth land; and (ii) the environment, where Commonwealth agencies are proposing to take an action.

The EPBC Act is also the statutory mechanism to ensure that Australia meets its obligations under key international environmental conventions. Section 3(1) of the EPBC Act outlines the objects of the EPBC Act:

(1) The objects of this Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and

(c) to promote the conservation of biodiversity; and

(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

Scope of submission

The department has prepared the following submission in response to the Productivity Commission's Issues Paper entitled *Major Project Development Assessment Processes (February 2013)* to assist the Productivity Commission with its inquiry. The department's submission provides:

- an overview of referral, assessment and approval activities under the EPBC Act;
- an overview of strategic assessments under EPBC Act;
- information regarding guidance materials and initiatives to aid proponents in decision-making; and
- an overview of mechanisms which streamline and improve the efficiency of assessment and approval processes under the EPBC Act.

1. ENVIRONMENTAL IMPACT ASSESSMENTS UNDER THE EPBC ACT

Matters of national environmental significance are important to Australians and are internationally significant given the interconnectedness of the global biosphere. The EPBC Act aims to balance the protection of these important environmental and cultural values with our society's economic and social needs by creating a legal framework and decision-making process based on the guiding principles of ecologically sustainable development.

Individual actions (often called a 'proposal' or 'project') that are likely to have a significant impact on matters of national environmental significance must be referred to the government for assessment and approval under Part 7 (referral), Part 8 (assessment) and Part 9 (approval) of the EPBC Act. Part 10 of the EPBC Act provides for strategic assessments at a landscape or regional scale and approval of classes of actions. Further details on strategic assessments are found in section two of this submission.

The government currently undertakes assessments of projects that impact on matters of national environmental significance through a range of environmental impact assessment approaches outlined in the EPBC Act.

Proponents are required to refer proposed actions to the department where:

- a proposed action is likely to have a significant impact on one or more matters of national environmental significance;
- a proposed action is likely to have a significant impact on the environment of Commonwealth land; or
- a proposed action is undertaken by a Commonwealth agency anywhere in the world, and is likely to have a significant impact on the environment.

Proponents can refer a proposal to the department for a decision as to whether or not the action will have a significant impact on nationally protected matters. The statutory timeframe for the decision making process on a referral is 20 business days.

If a significant impact is considered to be unlikely, then further assessment is not required and the proposal is either determined to be 'not a controlled action', and can proceed, or may be determined to be 'not a controlled action' and proceed provided it is undertaken in a 'particular manner'. This 'manner', which is specified in the decision notice, can refer to timing, management measures, or other regulatory instruments or decisions, all of which serve to inform the decision that a significant impact on a matter of national environmental significance is not likely.

If a significant impact is considered likely by the Commonwealth Environment Minister (the Minister) or their delegate, this action is determined to be a 'controlled action', and further assessment will be required prior to the Minister deciding whether to approve the project under the EPBC Act. If the Minister decides to approve the project, the Minister may also attach conditions to the approval.

Where there are conditions, there is likely to be monitoring of the implementation of the conditions following the approval decision. Conditions may require the preparation and approval of management plans before all or certain parts of the action can proceed.

1.1 Referrals under the EPBC Act

As outlined above, the EPBC Act comes into play when an action is likely to have a significant impact on a matter of national environmental significance (see Attachment A). When a proponent wants an action assessed for environmental impacts under the EPBC Act, they must refer the project to the department. This 'referral' is then released to the public, as well as relevant state, territory and Commonwealth ministers, for comment on whether the project is likely to have a significant impact on matters of national environmental significance.

The Minister or the Minister's delegate will then decide whether the likely environmental impacts of the project are such that it should be assessed under the EPBC Act. Any relevant public comments are taken into consideration in making that decision.

A broad variety of proponents have projects that may be subject to the environmental impact assessment provisions of the EPBC Act. These proponents include local, state and territory, and Australian Government agencies, private individuals, and small businesses to large companies. The proponents may also belong to a wide range of industries (see Figure 1).

Major projects assessed under the EPBC Act can occur across a variety of industries and sectors. Major projects have included; infrastructure and transport, mining, residential and commercial development, energy generation and supply. Based on the broad definition of major projects it is not possible to clearly identify the specific number of major projects that have been assessed under the EPBC Act. However for context a summary of referral decisions in relation to mining, energy generation and supply (non – renewable) and transport - water is summarised in Figures 2, 3 and 4 (based on the department's experience that these sectors often include major projects).

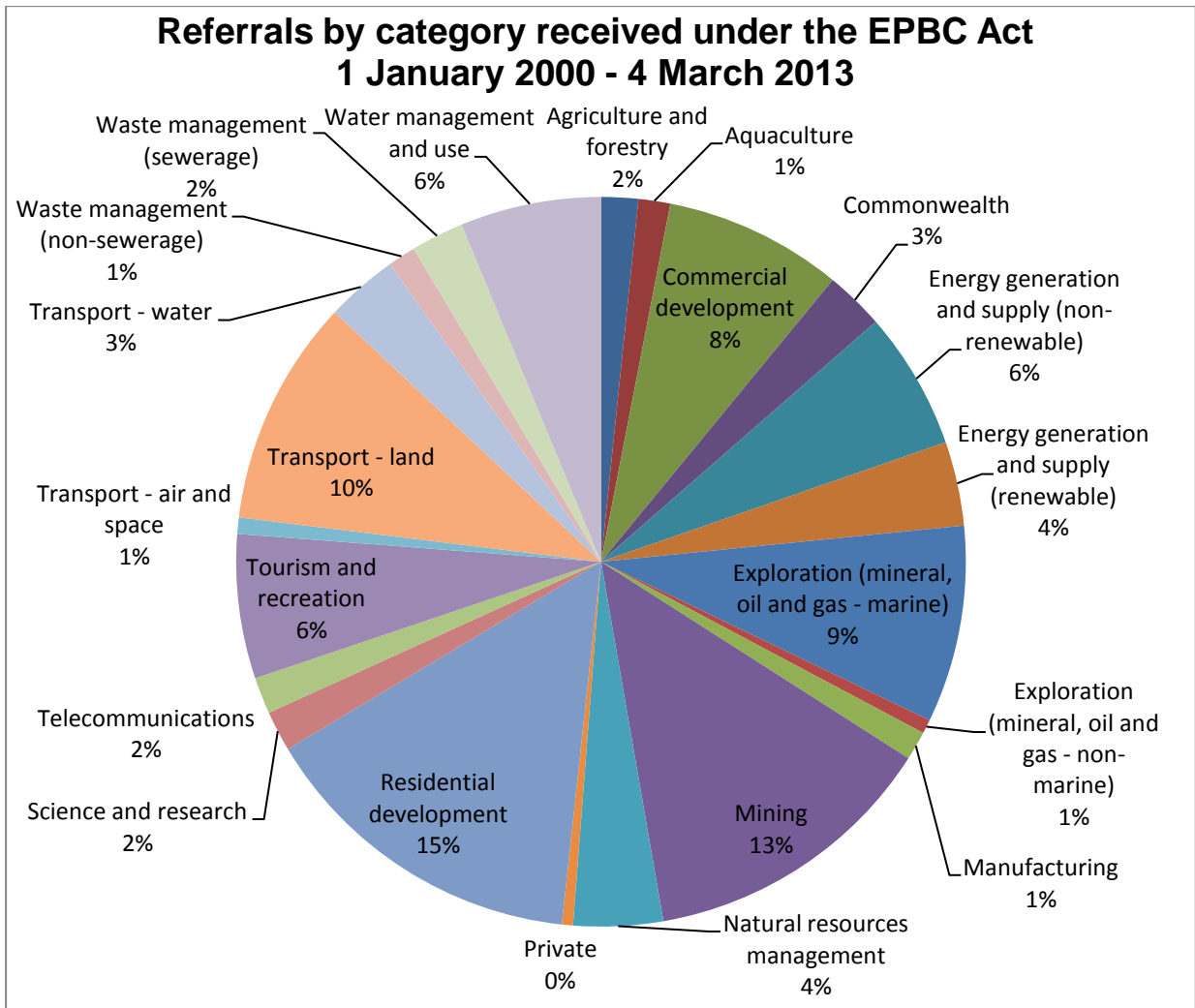


Figure 1: Industries which referred their activities for environmental impact assessment under the EPBC Act between 1 January 2000 and 4 March 2013. A total of 4693 referrals were received during this period.

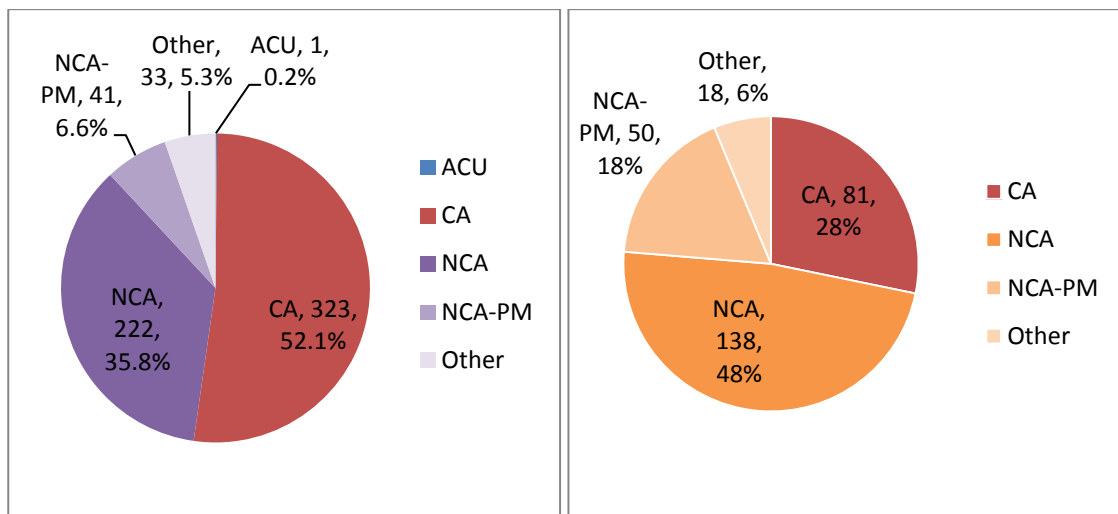


Figure 2: Mining - referral decisions since 2000

Figure 3: Energy generation and supply (non – renewable) referral decisions since 2000

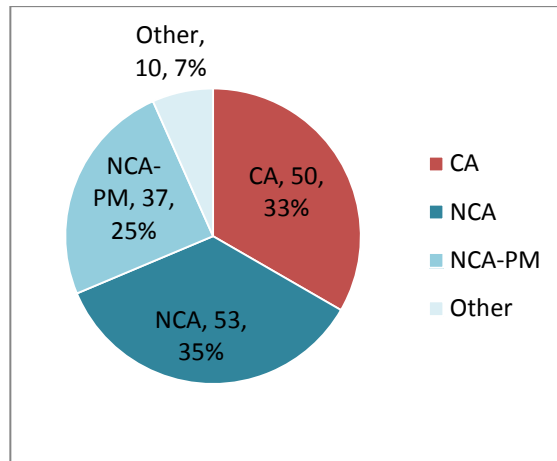


Figure 4: Transport (water) - referral decisions since 2000

Key to acronyms in Figures 2, 3 and 4 - ACU: Action clearly unacceptable; **CA:** Controlled action; **NCA:** Not a controlled action; **NCA-PM:** Not a controlled action – particular manner, and **Other:** Withdrawn or referral decision yet to be made. **Note:** not all referrals in Figures 2, 3 & 4 are considered major projects

1.2 Assessment under the EPBC Act

If a 'controlled action' has been determined then further assessment will be required prior to the Minister deciding whether to approve the project under the EPBC Act. Often major projects require assessment and approval under the EPBC Act due to the large scale, complexity and the nature of significant impacts to matters of national environmental significance. Generally major projects are also likely to trigger more than one controlling provision under the EPBC Act.

There are five different levels of assessment, depending on the significance of the project and how much information is already available (see Attachment B). Each level involves considering technical information assembled by the proponent and comments made by the public.

Assessment methods include:

- assessment on referral information (assessment done solely on the information provided in the referral form;
- assessment on preliminary documentation (referral form and any other relevant material identified by the Minister as being necessary to adequately assess a proposed action);
- assessment by public environment report;
- assessment by environmental impact statement; and
- assessment by public inquiry.¹

Assessments can also be undertaken by accredited assessment mechanisms such as bilateral agreements. If a proposed action is covered by an assessment bilateral agreement, then that action is assessed under the accredited state/territory process.

¹ To date, no proposal has been assessed by public inquiry under the EPBC Act

Assessment methods available under the EPBC Act vary in complexity. For example, a proposal where the impacts are localised, easily predicted or where the impacts have already been adequately assessed under other legislation, could be assessed using referral information or more likely preliminary documentation. A proposal involving a large number of issues and that has wide public concern may require the more detailed assessment approach of a public environment report, an environment impact statement or a public inquiry.

Major projects are generally assessed under the EPBC Act by the more detailed assessment methods such as; public environment reports, environmental impact statements and bilateral or accredited assessments reflecting the higher level of complexity of these proposed actions. However it is important to note that assessment methods do not directly collate with the size and scale of a proposed action, rather assessment methods are related to impacts on protected matters. Therefore, in some cases, major projects are assessed by low level assessment methods or do not require assessment at all under the EPBC Act. For context, a summary of assessment approaches for mining, energy generation and supply (non – renewable), and transport - water sectors is at Tables 1 and 2 (noting that not all actions in these sectors can be considered major projects).

Table 1 – Assessment approaches

	Mining	Energy generation and supply (non-renewable)	Transport - water
Referral Information	4	nil	nil
Preliminary Documentation	90	18	11
Public Environment Report	11	4	5
Environmental Impact Statement	22	23	9
Assessment under bilateral agreement	124	26	13
State/Territory accredited process	52	6	6
Assessment method not yet determined	1	1	1
Withdrawn before assessment approach	15	3	5
Lapsed before assessment approach	4	nil	nil
TOTAL	323	81	50

Table 2 – Approval decisions

	Mining	Energy generation and supply (non-renewable)	Transport - water
Approval decisions	148	43	19
Active projects	121	18	18
Withdrawn or lapsed	54	20	13

The EPBC Act outlines the process and timing requirements for each type of assessment (see Attachment B). Statutory timeframes vary with the type of assessment method².

- For assessment on referral information - the Minister must make a decision within 20 business days of receiving a finalised recommendation report.
- For assessment by environment impact statement, public environment report or preliminary documentation – the Minister must make a decision within 40 business days of receiving finalised documentation from the proponent.
- For assessment by a state/territory process - the Minister must make a decision within 30 business days of receiving an assessment report.
- For assessment by inquiry - the Minister must make a decision within 40 business days of receiving an inquiry report.

The majority of the time taken for environmental impact assessments is allocated to gathering, preparing and analysing information. In most cases, for major projects, most of the assessment time can be attributed to the proponent undertaking studies and preparing assessment documentation. For example, proponents spent an average of 20 months (from an average of 37 months from referral to approval) preparing environmental impact statements and collecting public comments for the approved actions assessed by environmental impact statement for the sectors outlined above.³

1.3 Minimising delays and requesting additional information

Generally the time taken to finalise environmental impact assessments is commensurate with the complexity of issues and the need to gather additional information on the environment and potential impacts. If a project has large scale impacts and is highly complex the assessments can occur over several years. The length of time for an assessment is often dependant on the quality and detail of assessment documentation and the certainty of impacts to protected matters or sensitivity of the environment. If impacts are uncertain and there is the potential for extreme or catastrophic environmental impacts then significant due diligence and review needs to be undertaken.

Where late, paused or extended statutory decisions do occur, they generally arise from the need to: consider complex technical issues; facilitate additional stakeholder consultation; seek additional information and/or expert advice; clarification of impacts of the action, and requesting additional details on avoidance, mitigation and offset measures. In most cases, proponents refer in the early stages of project planning. Therefore if an assessment does occur over several years it does not necessarily equate to a delay in the commencement of the project.

1.4 Approval statistics

In 2011–12, the statutory timeframes for the three key decision points in the environmental assessment process—a decision on whether the action is a controlled action, an assessment approach decision, and the approval decision—were met 63% of the time. Of the decisions

² EPBC Act, Section 130(1B a-e)

³ Note that this analysis is based on 17 projects for mining, energy generation and supply (non – renewable), and transport - water sectors approved since the commencement of the EPBC Act (not all actions in these sectors can be considered major projects).

that ran over the statutory timeframe, 70% were made within a further 10 business days of the statutory due date. This reflects the complexity of issues raised by many of the proposals considered under the EPBC Act in 2011–12 together with an increase in the number of other statutory requests such as those for statement of reasons, reconsiderations and variations to approvals (61 in 2010–11 compared with 78 in 2011–12), many of which were resource intensive.

1.5 Monitoring and compliance

If a proposed action has been given approval, the approval may or may not have conditions attached. Setting conditions on a controlled action is designed to reduce the impact the action is likely to have on protected matters. The Minister may attach conditions to an approval to protect, repair or mitigate damage to a matter protected by the EPBC Act. Conditions can include bonds or other securities, independent environmental auditing and compliance monitoring. Conditions of approval can also reflect public commitments by the proponent outlined in their assessment and referral documentation. The EPBC Act allows for revoking or varying conditions of approval where they become redundant or require change⁴.

Where proponents have sought approval well ahead of the action commencing some of the final details of the management of impacts on protected matters have yet to be established. In these cases, conditions of approval may include the requirement for management plans to be approved by the Minister, or a delegate of the Minister prior to the action or components of the action commencing. Therefore management plan conditions can provide flexibility to the proponent, including providing for alignment with state and territory requirements.

The EPBC Act includes a broad range of enforcement mechanisms for managing suspected or identified instances of non-compliance and for reviewing the compliance of referred projects. The government's approach to maximising compliance with the EPBC Act is outlined in the department's Compliance and Enforcement Policy. The department closely monitors projects referred and approved under the EPBC Act to ensure compliance with approval conditions as well as compliance with other decisions involving environmental commitments made by proponents e.g. 'particular manner decisions'.

1.6 Case studies

Outlined below are four case studies of major projects which illustrate the environmental impacts assessment process.

Case Study: Hancock Prospecting Pty Ltd, Mining near Alpha, Clermont and Mackay, QLD (Approved, with conditions)

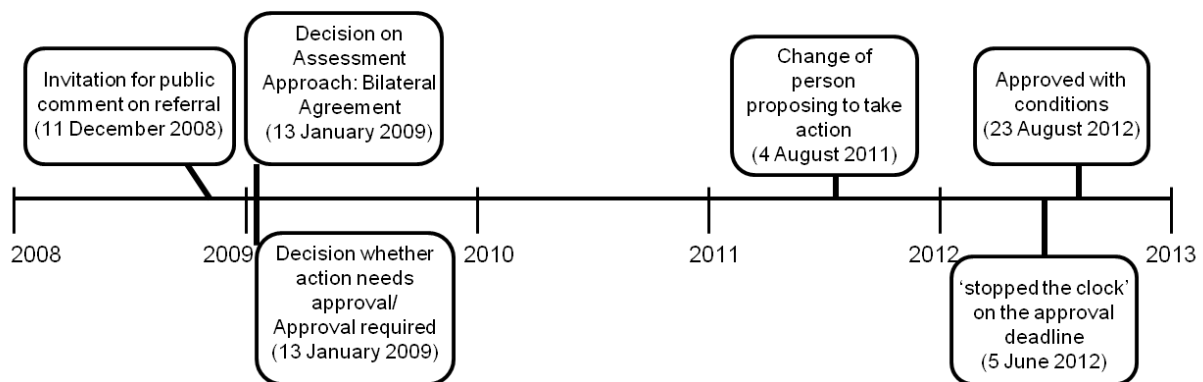
On 23 August 2012, the Minister approved (with conditions) a proposal to construct and operate a coal mine and supporting rail link in Central Queensland. The decision was based on a thorough and rigorous assessment of the proposal, taking into account the advice of the department and independent scientific advice. The assessment process was protracted, as the Minister intervened to ensure that the Commonwealth's standards for environmental regulation were maintained following an initial assessment by the Queensland government.

On 5 June 2012, the department 'stopped the clock' on the approval deadline to request further information from Hancock Prospecting to ensure that the Minister had all the relevant information to determine the acceptability of the proposal.

⁴ EPBC Act Section 143

The Commonwealth identified four key areas where further information was required; namely, modelling and survey work on the potential impacts on matters of national environmental significance; potential impacts of the proposed rail loop on marine species; incorporating the results of a cumulative impacts study for Abbot Point; and the adequacy of proposed environmental offsets.

Within 15 days the Commonwealth liaised with the proponent to obtain all the information that was not present in the original assessment report. On 23 August 2012, the Commonwealth concluded the assessment, addressing the inadequacies in the Queensland assessment. The conditions of approval include thirteen provisions for remedial actions and six standard conditions. For example, maximum disturbance limits for listed threatened species and ecological communities that exist within the proposed construction site. The timeframe for approval is displayed below.



2008/4648: Hancock Prospecting Pty Ltd/Mining/Near Alpha, Clermont and Mackay/QLD/Alpha Coal Project – Mine and Rail Development

Renegotiated assessment bilateral agreement with the Queensland government

Following the assessment described above, Commonwealth and Queensland government officials reviewed the environmental impact assessment arrangements between the two governments. These discussions culminated in the Minister and relevant Queensland ministers signing a revised assessment bilateral agreement on 14 June 2012. Bilateral approvals are now proceeding under renewed administrative arrangements which contain strong mutual accountabilities for good environmental outcomes in Queensland.

An exemplary case study is the Ella Bay Integrated Resort Development, Queensland which was approved by the Minister in December 2012. The project was assessed by environmental impact statement under the renegotiated bilateral agreement with Queensland. A Commonwealth decision was made very shortly after the receipt of the Queensland assessment, with no further requirement for information. The proposal is a good example of the new bilateral agreement working effectively in practice.

Case study: Chevron Wheatstone Project: Construct and operate a liquefied natural gas and domestic gas plant

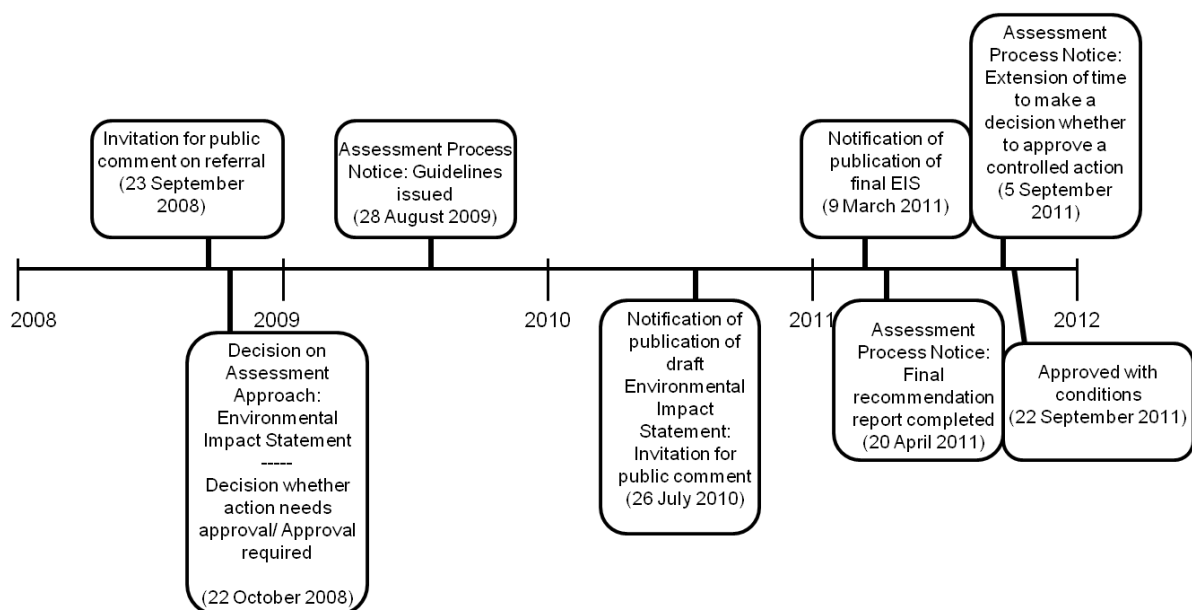
On 22 September 2011, the Minister approved (with conditions) the proposed Wheatstone Project which comprises offshore Petroleum in the Commonwealth Marine Area, approximately 225 km north of Onslow, and an onshore gas processing facility at the Ashburton North Strategic Industrial Area, 12 km south-west of Onslow in the south-west Pilbara region of Western Australia.

Chevron Australia Ltd proposed to construct and operate a 25 million tonnes per annum liquefied natural gas plant and 625 million standard cubic feet per day domestic gas plant. The development was to be part of the Ashburton North Strategic Industrial Area proposed by the Western Australian Government. The project would require the dredging of a shipping access channel and the construction of a new industrial port facility for shared use. Critical habitats for migratory and threatened species are known to occur within the vicinity of the proposal areas including known breeding areas for Green (*Chelonia mydas*), and Flatback (*Natator depressus*) Turtles. In addition, Humpback Whale (*Megaptera novaengliae*) cows and calves are known to migrate through the offshore development area during their southerly migration.

Assessment by Environmental Impact Statement was determined as the proposed development encompassed a large number of complex environmental issues and uncertainties.

There were a number of conditions of approval. Chevron Australia was required to develop and implement management plans, which were to be provided to the Minister for further approval. For instance, Chevron Australia was tasked with creating a marine fauna interaction management plan and a drilling and blasting management plan as well as a number of other documents. The conditions noted that where these plans met state and Commonwealth requirements, only one document may be required, thereby reducing duplication.

The timeframe for approval is displayed below. There was an extension of time on the approval decision. During this time, the department requested additional information from Chevron Australia. This informed the development of robust approval conditions.



2008/4469: Chevron Australia Pty Ltd/Energy generation and supply (non-renewable)/Pilbara coast/WA & Commonwealth marine/Construct & operate LNG & domestic gas plant onshore & offshore facilities – Wheatstone

Note that the diagram does not display three notifications of variations to approval (3 July 2012, 22 January 2013 and 9 April 2013)

Case study: GDF SUEZ Bonaparte Pty Ltd - Energy generation and supply (non-renewable)

On 24 October 2012, the Minister approved with conditions a proposal by GDF SUEZ Bonaparte Pty Ltd to develop the Bonaparte Liquefied Natural Gas Project, using a Floating LNG Facility to produce, liquefy and export natural gas, operating for a period of 30 years. The project's aim is to commercialise natural gas resources from three remote offshore fields (Petrel, Tern and Frigate) for the Asia-Pacific markets. The Petrel, Tern and Frigate fields are located in the Joseph Bonaparte Gulf, wholly within Commonwealth waters, approximately 250 km west of Darwin and 170 km from the nearest coastline. The proposal was the second Floating LNG Facility to be assessed under the EPBC Act (the first being Shell Prelude, approved in 2010 following assessment by EIS).

Issues considered through the EPBC Act assessment process included:

- the risk (likelihood and consequences) and management of unplanned incidents (e.g. blowout of a production well, the rupture of the LNG storage tank in the event of a vessel collision).
- the risk of naturally occurring radioactive materials (NORMs) accumulating in the facility, and measures to prevent NORM accumulation, and manage their collection, handling and disposal;
- the impact of discharges into the marine environment (e.g. desalination brine, hydrotest fluids, produced formation water and cooling water);
- end-of-life facility decommissioning, including whether complete removal (if required) would be viable from environmental, safety and economic perspectives; and
- impacts on other users (commercial and recreational fishers).

The assessment method chosen was preliminary documentation. This is one of the lowest levels of assessment, commensurate with the assessed level of complexity of the proposal. This level of assessment was considered appropriate due to the level of information provided in the referral, the limited matters of national environmental significance to be assessed, and the understanding of the nature and scale of the potential impacts, based on the previous Floating LNG Facility assessment.

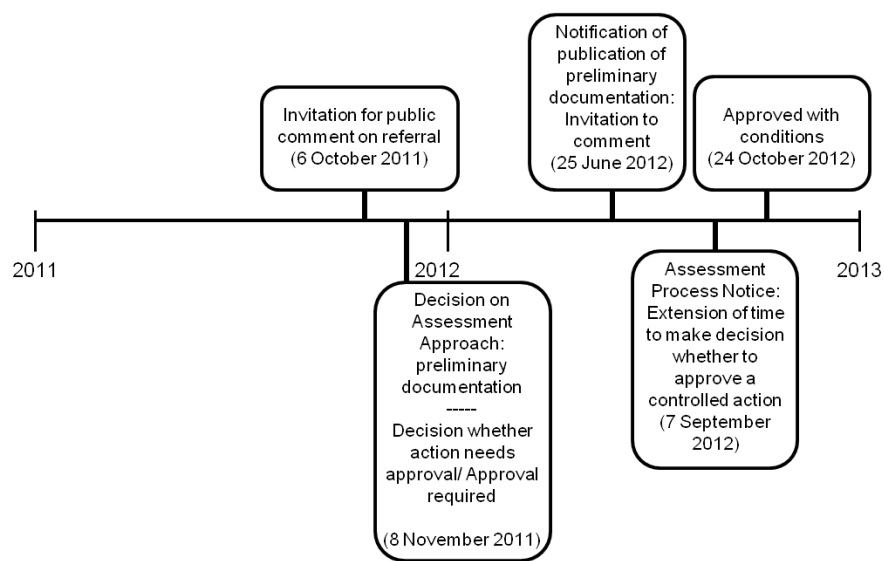
The proponent provided detailed information on the project and its potential impacts in the referral document, which facilitated the assessment process and meant only limited additional information was required (e.g. results of environmental baseline studies completed after the referral). The assessment process was also informed by the information contained in the department's Species Profile and Threats Database and the (then draft) Marine Bioregional Plans for the North and the North-west Region.

The approval decision was made prior to the company's Final Investment Decision which was scheduled for 2014, with first gas in 2018. While environmental issues were assessed in sufficient detail for approval under the EPBC Act, management measures were yet to be developed due to the nature of the proposal. The approval conditions which were applied allowed for adaptive management. Examples of approval conditions include a requirement for management plans to be submitted for approval (e.g. hydrotest fluid management and disposal procedures, marine pollution contingency plan and an operational and scientific monitoring program).

In response to comments on the proposed conditions by the proponent and the then Minister for Resources the final conditions were amended to provide for better alignment with approvals required under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The timeframe for the assessment process is outlined below. It does not include the time for the proponent to take to prepare the preliminary documentation (approximately five months). The public comment period during the assessment was 20 business days, from 25 June 2012. Note that the decision clock was extended by 20 business days to allow for sufficient time for ministerial consideration and consultation with the proponent and Commonwealth ministers. The assessment decision was made 4 days late due to the availability of decision-makers.

Overall the time between the referral decision and the final approval decision was less than 12 months.



2011/6141: GDF SUEZ Bonaparte Pty Ltd/Energy generation and supply (non-renewable)/Joseph Bonaparte Gulf/Commonwealth Marine/Bonaparte Liquefied Natural Gas Project

2. STRATEGIC APPROACHES

The government is increasing the use of strategic assessments to improve certainty for business by reducing the need for project-by-project assessments. Over the past 24 months, the number of strategic assessments has doubled from 8 to 16. Notably, there are three strategic assessments currently underway at the request of major mining companies.

Strategic assessments are landscape scale assessments and unlike project-by-project assessments, which look at individual actions (such as mining, construction or operation of a pipeline or wind farm), they can consider a much broader set of actions.

The key steps in the strategic assessment process are:

- preparation of a Strategic Assessment Agreement and terms of reference describing the requirements of the strategic assessment, the geographic coverage of the strategic assessment (where relevant) and the 'classes of actions' to be assessed;
- public exhibition of the strategic assessment documents;

- endorsement of the final strategic assessment under Part 10 of the EPBC Act (this means that classes of actions addressed in the strategic assessment will have acceptable impacts on matters of national environmental significance if undertaken in accordance with the endorsed final strategic assessment); and
- approval of classes of actions under Part 10 (projects covered by the approval do not need individual referral, assessment or approval under the EPBC Act provided they are undertaken in accordance with the endorsed final strategic assessment).

A strategic assessment offers the potential to deal with cumulative impacts on matters of national environmental significance and to look for both conservation and planning outcomes on a much larger scale than can be achieved through project-by-project assessments. The process is designed to be flexible and provide the opportunity to reach a negotiated outcome for the benefit of both parties.

The Pilbara region of Western Australia is experiencing considerable investment in iron ore mining and associated infrastructure. For example, Rio Tinto is investing approximately US \$20 billion over five years to expand their operations in two major stages: from current capacity of 230 million tonnes per annum (Mt/a) to 290 Mt/a in 2013 and to 360 Mt/a by 2015. This is an increase of more than 50% of their current capacity and Rio Tinto claims this represents the largest integrated mining project in Australian history. Rio Tinto Iron Ore (through its subsidiary Hamersley Iron Pty Ltd) and BHP Billiton Iron Ore are undertaking strategic assessments covering their major expansion plans for iron ore mining in the Pilbara region for a period of up to 50 years, including associated infrastructure. If approved by the Minister, the assessment will remove the need for individual exploration or mining projects to be referred for assessment. Such an approach has benefits for the companies, regulators and the community.

As another example, the Australian and NSW Governments have signed an agreement to undertake a strategic assessment under the EPBC Act of new and expanded coal mining operations in the Upper Hunter River district of NSW over the next 30 years. Ten mining companies with exploration and mining leases in the district are participating and have agreed to fund the strategic assessment. A Biodiversity Plan will be prepared to identify priority conservation lands across the landscape and offset arrangements for mining projects. If endorsed and approved under the EPBC Act, the Biodiversity Plan will deliver upfront certainty for all stakeholders on biodiversity requirements for new and expanded mines. Mining projects will no longer need to be individually referred under the EPBC Act because of impacts on biodiversity related matters of national environmental significance.

Advantages of strategic assessments include:

- clear requirements for protection of matters of national environmental significance are set up-front, at the planning stage; greater certainty to local communities and developers over future development;
- reduced administrative burden for strategic assessment partners and government through:
 - a substantial reduction in the number of environmental assessments required for an area; and
 - the avoidance of potentially duplicative and separate environmental assessments by different types of government (such as Australian, state, territory or local governments)

- capacity to achieve better environmental outcomes and address cumulative impacts at the landscape level;
- coordinated establishment and management of offsets; and
- flexible timeframes to better meet planning processes.

As outlined in the Australian Government Response to the Independent Review of the EPBC Act (the Government Response), the government is increasing the use of strategic assessments to improve certainty for business by reducing the need for project-by-project assessments. As previously noted, the Commonwealth in collaboration with state and territory governments, and in some cases industry, has doubled the number of strategic assessments undertaken over the last 24 months (from eight to 16) with twelve active strategic assessments currently underway. To date, over 850 referrals have been avoided through the completion of four strategic assessments under EPBC Act.

The department has estimated the number of individual project referrals which may be avoided by the use of the Melbourne Urban Growth Boundary strategic assessment (see below) and the Western Sydney Growth Centres strategic assessment. In the latter case, the department estimates that up to 500 referrals will be avoided over the 30 year life of the program.

Case study: Melbourne Urban Growth Boundary

Overview: The Victorian Government, in partnership with the Australian Government, has completed a strategic assessment of a program to provide for Melbourne's population growth to 2030 (*Delivering Melbourne's Newest Sustainable Communities*). Four new growth precincts, allowing for up to 350,000 new households, will be established to the west, north and south-east of the city. If approved, development in these precincts under the program will not need individual referrals under the EPBC Act.

Benefits for the private sector: Access Economics (2011) estimated that the Melbourne strategic assessment will deliver cost savings in net present value in excess of \$3.2 billion for the private sector over its lifetime to 2039. These savings are made by reducing delay and bringing forward project approvals. The Melbourne strategic assessment has removed the need for referral of approximately 252 projects over the life of the program, and has also saved the substantial associated monitoring and compliance costs for those individual projects.

Benefits for the environment: The strategic assessment identified the highest quality habitat at the landscape scale for protection. This will result in establishment of a new 15,000 hectares grassland reserve to the west of Melbourne and a new 1,200 hectares grassy woodland reserve north-east of Melbourne. The 15,000 hectares reserve includes 10,000 hectares of critically endangered grasslands.

The conservation outcomes of this strategic assessment are a quantum shift in sustainable planning and protection of native vegetation. Rather than requiring individual developers to set aside ad hoc fragments of native vegetation, often with limited long term conservation benefits, offset funding will be used by the Victorian Government to progressively acquire and manage the new reserves. The new reserves will conserve 20% of the remaining quality threatened native grasslands on the 2.4 million hectares Victorian Volcanic Plains Bioregion (compared to the current 2%) ensuring meaningful protection at a ecosystem and landscape scale for native grasslands and associated threatened species, such as the striped legless lizard.

3. CURRENT GUIDANCE FOR PROPONENTS UNDER THE EPBC ACT

The department works closely with proponents, state, territory and local governments, and other stakeholders, to ensure that the requirements of the environmental assessment process under the EPBC Act are understood. The department encourages proponents to discuss projects early in their development so that EPBC Act-related issues can be highlighted and taken into account in a project's decision making and planning. Effective and efficient assessments of proposed actions under the EPBC Act can be characterised by:

- proponents engaging early with the department to ensure that EPBC Act obligations are fully understood;
- proponents seeking to address EPBC Act requirements at the same time as state or territory requirements, to maximise the opportunity to use accredited state and territory assessment processes;
- projects using environmentally conscious design that avoids or minimises habitat clearing;
- proponents providing high-quality information to regulatory agencies;
- proponents engaging positively with the community; and
- project outcomes clearly maintaining and enhancing the environment, including, where appropriate, providing additional habitat for threatened species.

The department notes that while guidance material exists for proponents to self assess whether their proposed action will trigger the EPBC Act, there is a statutory requirement for the referral of projects which are likely to have a significant impact, for a decision by the Minister.

3.1 Current guidelines under the EPBC Act

Guidelines in the form of policy statements are available to help proponents understand the EPBC Act and its requirements. Such documents provide procedural standards and provide clarity and certainty for proponents. Guidance is also available on EPBC listed species and ecological communities.

The *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* provides generic guidance about what constitutes a significant impact for each matter of national environmental significance. The department has released industry guidelines which provide specific guidance for industry sectors (i.e. offshore aquaculture, wind farm industry) and should be read in conjunction with the significant impact guidelines. Guidelines are also available for proponents working on or adjacent to Commonwealth land through *EPBC Act Policy Statement 1.2 Significant Impact Guidelines – Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies*. Policy statements can be found on the department's website at www.environment.gov.au/epbc/publications/index.html#policy.

The department also has a number of interactive tools which provide proponents with information regarding matters of national environmental significance. The Species Profile and Threats Database is designed to provide information about species and ecological communities listed under the EPBC Act. It provides information on the species' appearance, population, distribution, habitat, feeding, reproduction and taxonomy. The database is available at www.environment.gov.au/sprat.

The Protected Matter Search Tool provides a map interface that offers a number of layers such as Local Government Areas, Natural Resource Management regions, World Heritage Properties and Commonwealth Marine Areas. This search tool will generate a report that can determine whether matters of national environmental significance or other matters protected under the EPBC Act are likely to occur in the proponent's area of interest. The interactive map is available at www.environment.gov.au/epbc/pmst/.

4. ENVIRONMENTAL REGULATION REFORM

The *Major Project Development Assessment Processes - Productivity Commission Issues Paper (February 2013)* discusses regulatory burdens for business through duplicative processes and processing delays. The government is committed to improving the efficiency of national environmental law, while maintaining high environmental standards.

On 24 August 2011, the Minister released the Government Response to the Independent Review of the EPBC Act (Government Response) as part of a broad package of reforms for Australia's national environment law. The objectives of the reform package are to:

- deliver better environmental protection focusing on whole regions and ecosystems and faster environmental assessments;
- provide a consistent national approach to environmental impact assessments that removes duplication, cuts red tape; and
- provide better upfront guidance on legislation requirements, with more long-term certainty and transparency.

As part of its work to implement the reform package, the government has been working to deliver a simpler environmental protection system that has clearer standards and gives faster decisions to ensure our nation has a both a resilient environment and a strong economy. This work has included the matters outlined below.

4.1 Improving efficiency

There are a number of mechanisms in the EPBC Act to streamline the assessment and approval processes. Efficient regulatory structures are also dependent on clarity for proponents around requirements and processes. The government has committed to providing additional tools such as better guidance, training in key areas to create greater certainty, and support for decision making among proponents. There are a number of initiatives being produced by the department that have general application. As discussed earlier under "Current guidance for proponents under the EPBC Act", there are also a number of materials that have direct application to exploration in marine environments. The Commonwealth is committed to developing standard Terms of Reference for environmental impact assessments and conditions of approval for key sectors to enhance the efficiency and predictability of the process.

4.2 Streamlining Commonwealth regulatory arrangements

There are some cases where national environment law overlaps with other Commonwealth regulatory arrangements, with the potential for duplication. For instance, management of the environment is regulated under both the EPBC Act and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act). The OPGGS Act applies to offshore petroleum operations beyond coastal waters (greater than three nautical miles from the low-tide coastline). The Commonwealth is examining mechanisms to streamline its own regulatory arrangements, with a focus on the oil and gas sector.

4.3 Offsets policy

The term 'environmental offsets' refers to measures that compensate for the residual adverse impacts of an action on the environment. Offsets provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining, unavoidable impacts are termed 'residual impacts'. For assessments under the EPBC Act, offsets are only required if residual impacts on matters protected under the EPBC Act are significant.

An offsets package is a suite of actions that a proponent undertakes in order to compensate for the residual significant impact of a project. It can comprise a combination of direct offsets and other compensatory measures. Direct offsets are those actions that provide a measurable conservation gain for a matter protected under national environment law. For example, a conservation gain may be achieved by improving existing habitat for a threatened species listed under the EPBC Act. Other compensatory measures are those actions that do not directly offset the impacts on the protected matter, but are anticipated to lead to benefits for the impacted protected matter, such as funding for research or educational programs. A requirement for offsets is a common feature of conditions attached to project approvals under the EPBC Act.

In October 2012, the department released the EPBC Act environmental offsets policy (policy) and Offsets assessment guide (guide). The policy outlines the government's approach to the use of environmental offsets under the EPBC Act. The guide gives effect to the requirements of the policy regarding the suitability of offsets for threatened species and ecological communities listed under the EPBC Act. The guide is available to proponents and other stakeholders to assist with planning for future development proposals and estimating future offsets requirements, using a consistent and transparent ecological framework. The policy and guide are available at: www.environment.gov.au/epbc/publications/epbc-act-referrals-policy.pdf

4.4 Bilateral agreements under the EPBC Act

The *Major Project Development Assessment Processes - Productivity Commission Issues Paper (February 2013)* makes reference to assessment bilateral agreements, which allow the Minister to accredit state or territory assessment processes for the purpose of the requirements of the EPBC Act.

In accordance with its objects, the EPBC Act includes established mechanisms to minimise the risk of duplication and increase efficiency. A key mechanism to minimise duplication is bilateral agreements. Chapter 3, Part 5 of the EPBC Act sets out the approach to bilateral agreements. The Object of such agreements are set out in Section 44 of the EPBC Act as follows.

44 Object of this Part

The object of this Part is to provide for agreements between the Commonwealth and a State or self-governing Territory that:

- (a) protect the environment; and*
- (b) promote the conservation and ecologically sustainable use of natural resources; and*
- (c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and*
- (d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).*

There are two types of bilateral agreements:

- an *assessment bilateral agreement* may declare that actions assessed in a specified manner by a state or territory need not be assessed under the EPBC Act, thus minimising duplication between Commonwealth and state or territory assessments; and
- an *approval bilateral agreement* may declare that actions taken under accredited state or territory management arrangements or authorisation processes do not need further Commonwealth approval under the EPBC Act.

If a proposed action is covered by an assessment bilateral, then that action is assessed under the accredited state/territory process. After assessment, the proposed action still requires approval from the Minister under the EPBC Act⁵. This arrangement in effect allows a proponent to produce a single set of environmental assessment documentation and to undertake a single public consultation process.

Assessment bilateral agreements have been negotiated with each state and territory. The New South Wales agreement has expired, however it is expected to be renewed in 2013.

Since August 2011, much work has been done to progress the Government Response, both within the Commonwealth and in partnership with state and territory governments and stakeholders. During 2012, the Commonwealth worked with states and territories on the viability of signing approval bilateral agreements, as a mechanism for improving the efficiency of environmental impact assessment. This proved to be complex and would have resulted in systems that would not have simplified the regulatory regime. As a result, the Commonwealth is not progressing negotiation of approval bilateral agreements.

Nonetheless, the Commonwealth remains committed to increasing efficiency and reducing duplication. Therefore, the Commonwealth will work to review its assessment bilateral agreements with states and territories to ensure greater efficiency and transparency whilst reducing duplication.

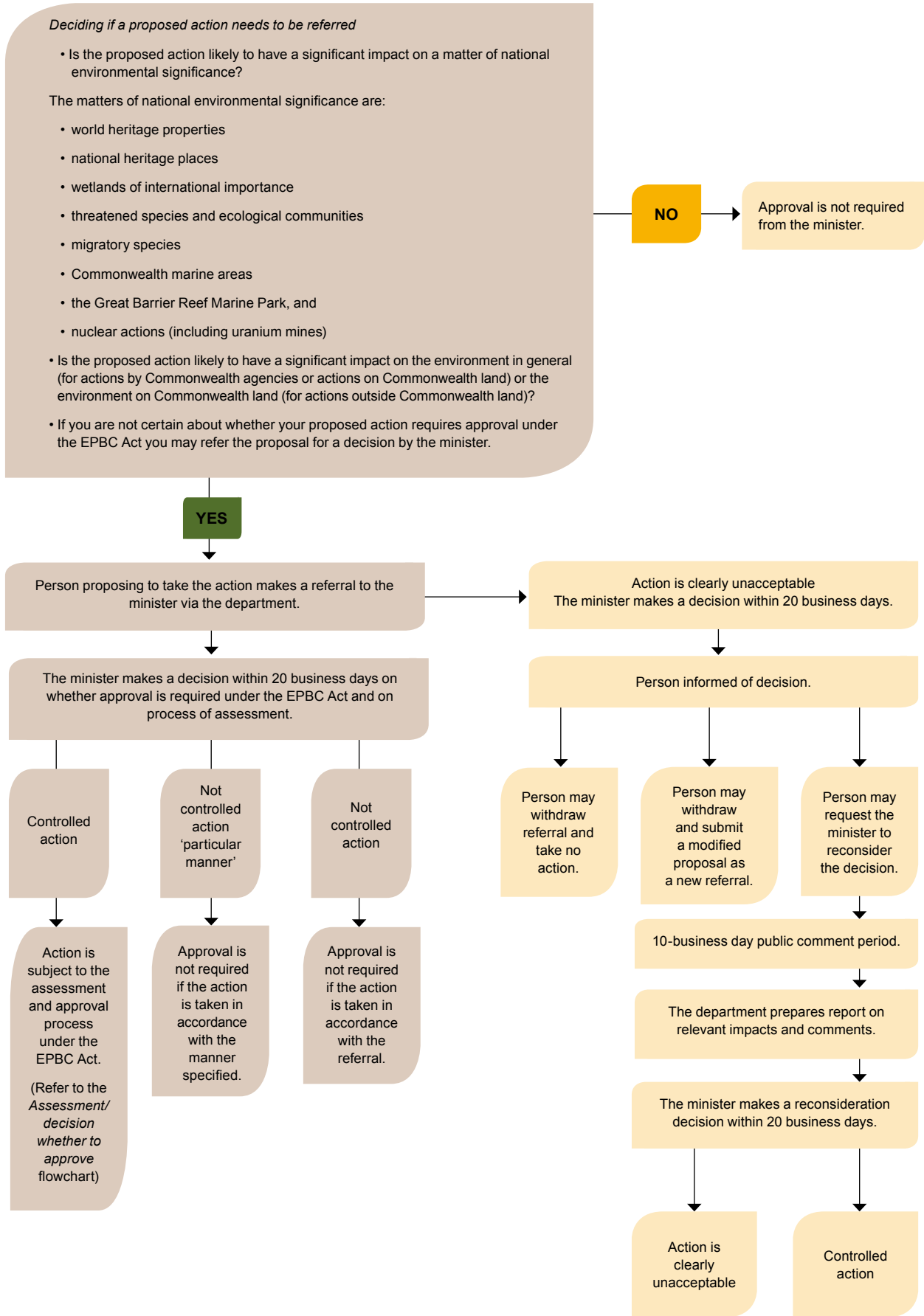
⁵ EPBC Act, Section 47(4) and Section 133.

Attachments

Attachment A: EPBC Act environment assessment process – referral

Attachment B: EPBC Act environment assessment process – assessment/decision whether to approve

EPBC Act environment assessment process—referral



EPBC Act environment assessment process—assessment/decision whether to approve

