



**EDO** Qld.

Environmental Defenders Office

*Using the law to protect  
our environment.*

# Environment Protection and Biodiversity Conservation Act 1999: REFERRAL CHECKLIST and EXAMPLE SUBMISSION

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*This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.*

## Introduction

EDO Qld and EDO NSW have useful information sheets<sup>1</sup> about the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) that describe the Act and processes under that Act.

This checklist is to assist community groups and citizens in making a submission or representation to the Federal Environment Minister about:

- a referral that is open for public submission; or
- a project that might need to be referred for assessment of its impacts on matters of national environmental significance.

The example submission at the end of this factsheet is for people who are making a submission and need a template to get started or to save time.

## Checklist

### Action

1. What is the action<sup>2</sup>?
2. Should the action be referred to the Environment Minister for assessment as it is likely to have a significant impact<sup>3</sup> on a matter of national environmental significance?

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<sup>1</sup>[http://www.edo.org.au/edonsw/site/factsh/fs03\\_1.php](http://www.edo.org.au/edonsw/site/factsh/fs03_1.php) about The *Environment Protection and Biodiversity Conservation Act 1999* and <http://www.edo.org.au/edoqld/edoqld/new/10.10-Cwlth-Laws-the-EPBC-Act.pdf>, which explains the relationship between Cth and State laws

<sup>2</sup> 'Actions' include such things as projects, developments, undertaking and activities, or an alteration to one of these things. A decision by government to grant approval for an action, or make a grant of funding is not an action.

3. Does any referral correctly describe the “action”? What amendments are needed to the description of “action” to be correct?
4. Is the action referred part of a larger action?
5. Should you ask the Environment Minister to require the proponent to refer the whole larger action for assessment as a whole?<sup>4</sup>

### **Matters of National Environmental Significance**

6. What matters of National Environmental Significance<sup>5</sup>, (NES) might be impacted by the action?
7. What matters of NES do you think ought to be included in the referral and subject to detailed assessment i.e. decided by the Federal Environment Minister to be “controlling provisions”?
8. Does the referral list enough detail on the matters of NES discussed. For example, are all the relevant species included when the matter of NES “listed threatened species” are discussed in the referral?

### **Impacts on Matters of NES**

9. Are all the impacts<sup>6</sup> on matters of NES referred to? As well as direct impacts, third party activities might be an impact of a proposal, for example of agricultural activities enabled by a dam.
10. Do you agree with any assertion by the proponent that the impacts can be managed by conditions or if taken in a particular manner<sup>7</sup>, thus avoiding the need for assessment?
11. Is the project clearly unacceptable and thus warranting refusal by the Environment Minister prior to assessment?<sup>8</sup>

<sup>3</sup> <sup>2</sup> “Significant impact” is not defined in the EPBC Act, but the Department has released *Significant impact guidelines* (available from <http://www.environment.gov.au/epbc/publications/pubs/nes-guidelines.pdf>) which list the factors they will consider when determining whether an impact is “significant”, including all on-site and off-site impacts, all direct and indirect impacts, the frequency and duration of the action, and the sensitivity of the receiving environment. Justice Branson in the *Booth v Bosworth* case said that “significant” meant “an impact that is important, notable or of consequence having regard to the *context* and intensity of the action”. Her mention of context provides the only basis on which to demand the Department assess cumulative impacts.

<sup>4</sup> Section 74A *Environment Protection and Biodiversity Conservation Act 1999*- Minister’s power to request referral of larger action

<sup>5</sup> World Heritage Areas, Ramsar Wetlands; Nuclear Actions, Cth listed migratory species, National Heritage places; Cth marine environment; Cth listed threatened species and ecological communities; Great Barrier Reef Mariner Park; nuclear actions

<sup>6</sup> Actions outside the control of the proponent but reasonably imputed as within the proponent’s contemplation (such as the impacts of actions of third parties) are impacts of the proponent’s proposed action. See Federal Court appeal decision in Nathan Dam case.

<sup>7</sup> Section 77A -*Environment Protection and Biodiversity Conservation Act 1999*- Action to be taken in a particular manner.

<sup>8</sup> Section 74C, *Environment Protection and Biodiversity Conservation Act 1999*- Informing person proposing to take an action that action clearly unacceptable.



## Method of Assessment

12. Does the proponent agree that the action ought to be a “controlled action” and thus subject to assessment and decision-making under the EPBC Act?
13. What method of assessment is appropriate? Public inquiry, Environmental Impact Statement, assessment on referral information only, public environment report, assessment on the preliminary documentation, or other?

## Misleading information

14. Does the referral provide false or misleading information? If you believe it does, you should state the reasons why and provide correct information, if available.
15. A person is guilty of an offence under s 489 of the EPBC Act if they provide information in response to a requirement under the Act and are reckless as to whether the information is false or misleading in a material particular and penalties apply.<sup>9</sup>

## Submission

16. There are no formal requirements for commenting on referrals or sending in a letter seeking action by the Federal Environment Minister. However, all submissions should include your name, address and contact details and be in by the due date. Include evidence that supports your comments, for example reports about the species found in the area, or likely to be found according to the website of the Department of Sustainability, Environment, Water, Population and Communities.
17. Use the checklist to identify errors or missing information and any decisions that you say the Environment Minister ought to make in the circumstances.

## Useful References

### **Environmental Defenders Office (Qld) Inc.**

Phone: (07) 3211 4466

Email: [edoqld@edo.org.au](mailto:edoqld@edo.org.au)

Website: <http://www.edo.org.au/edoqld/home.html>

### **Department of Environment and Resource Management**

Phone: 13 7468

Website: [www.derm.qld.gov.au](http://www.derm.qld.gov.au)

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<sup>9</sup>The penalties are a criminal penalty of up to two years imprisonment and/or a penalty of \$13,200. If the Minister grants an approval, or sets approval conditions, as a result of false or misleading information, any damage to the environment resulting from the action is taken to arise from the provision of false or misleading information.



**Department of Sustainability, Environment, Water, Population and Communities**  
GPO Box 787 Canberra ACT 2601  
Phone: 61 2 6274 1111  
Website: <http://www.environment.gov.au/epbc/notices/epbc-help.html#referrals>



[## INSTRUCTIONS: This is an example only, you need to amend it for the proposal that interests you. Make sure you lodge by the due date##]

[##Insert your name, address and contact details and date##]

**Referral Business Entry Point, EIA Policy Section (EPBC Act)**

Approvals and Wildlife Division  
Department of the Environment, Water, Heritage and the Arts  
G PO Box 787 Canberra ACT 2601  
**Email:** epbc.referrals@environment.gov.au  
**Fax:** 02 6274 1789

Dear Sir/Madam,

[## insert EPBC Referral Number and Proposal title. For example, *EPBC 2015/200 Smith Ltd, Residential Development Springbrook*##]

[##Insert brief description of yourself or the group you represent. For example, *I am a bird watcher who frequently visit this site*##]

I/We consider that this action will have a significant impact on matters of national environmental significance.

Matters of National Environmental Significance

[## insert each matter of national environmental significance<sup>10</sup> that is relevant and state why this project would have a significant impact on that matter. Check the Significant Impact Guidelines<sup>11</sup> for help. Include evidence or references to back up your view.

For example, *This project will significant affect a listed species the black-breasted button-quail as it will impact on their feeding and breeding and they have very few breeding areas remaining on the east coast of Australia according to the EPBC Recovery Program for this species. The project will cause clearing of 50 hectares of vegetation in a site where I have observed the birds breeding in January 2010 and February 2011. Nearby habitat for those birds was burnt in a fire in March 2011, so it's even more important to protect the habitat from clearing. Attached is a summary of my bird watchers group's field notes and photographs]*

[## consider if the referral contains misleading or wrong information. If it does, say so and give your evidence or reasons and what is the correct information.

For example, *The referral is wrong in saying the land eastern side where the vegetation will not be cleared is suitable black-breasted button-quail breeding area. This is because the residential areas will bring dogs and cats which will wander and disturb the small ground dwelling birds – see s3.1 4 Feral Animals EPBC Recovery Program ]*

Yours faithfully [##insert your signature name and the name of your group if you are in a group##]

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<sup>10</sup> World Heritage Areas, Ramsar Wetlands; Nuclear Actions, Cth listed migratory species, National Heritage places; Cth marine environment; Cth listed threatened species and ecological communities; Great Barrier Reef Mariner Park; nuclear actions

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