

Frequently Asked Questions

General Questions

What are the environmental regulatory reforms?

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

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

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

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

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

Why are you reforming the environmental impact assessment process?

Government, industry and the community all recognise that there is a need for reform and modernisation of the Northern Territory's environment protection framework – particularly the process of environmental impact assessment and approval.

There have been several reviews of the Territory's Environmental Assessment Act over the last 10 years. These reviews and other feedback from non-government organisations, industry and individuals have identified:

- A lack of transparency in the current environmental impact assessment system particularly in respect of decision making.
- Uncertainty about the responsibilities of proponents, the NT EPA and government agencies, and lengthy and uncertain timeframes for completing assessments.
- Inconsistency and inequity in the application of rules and processes for similar projects, different approaches and conditions for managing similar environmental impacts across different industries.
- Gaps in the assessment system which have meant that some major projects have not undergone assessment and approval.
- Other cases where the legislation under which approval is given does not provide for enforceable conditions to protect the environment.
- Failure and inability to take appropriate action to ensure proponents comply with environmental obligations.

- A risk that agencies responsible for promoting a sector do not act with appropriate rigour to manage environmental impacts (sectoral capture).

These issues result in our current system being slow and costly for industry and government, complex for regulators and unclear in its outcomes for the community.

These are not matters that can be resolved with minor 'tweaking' of the existing legislation.

These inadequacies have contributed to a general lack of confidence in the Territory's capacity to manage the environment, and to attract and facilitate industry investment for ecologically

Why hasn't the Government already introduced these reforms to parliament following the completion of multiple reviews into the environment assessment system many years ago?

Separate reviews of the current NT environmental assessment system (two reviews by the Northern Territory's environment protection authorities and 2015 Hawke review) have highlighted the need for reform and provided their recommendations.

Government has focussed its reform efforts on the environmental impact assessment process, both administratively and legislatively.

Proposed changes to the impact assessment process were developed based on the feedback received through these past reviews as well as more recent consultation with industry groups, land councils, environmental groups, government agencies and other key stakeholders including the public.

The Territory Government felt it necessary to consult the community on draft legislation before introducing reforms. Community feedback has informed and improved the proposed legislation.

Who will benefit from the environmental reforms?

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

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

Environmental impact assessment

Why have an environmental impact assessment process?

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

For further information about environmental impact assessments, refer to the fact sheet Environmental Impact Assessment System.

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

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

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

For further information about the NT EPA's responsibilities in conducting environmental impact assessments, refer to the fact sheet *The Changing Role of the NT EPA*.

How is the proposed impact assessment process different from the current Environmental Impact Assessment (EIA) process?

There are a number of differences between the current assessment process and what's proposed for the future.

Key differences include:

- introduction of an environmental approval issued by the Minister for Environment and Natural Resources
- clear referral pathways for when a project is to be referred to the NT EPA by a proponent
- tiered methods for environmental impact assessment determined by the NT EPA based on the complexity of the project and other key aspects
- ability to conduct environmental impact assessments at a broader landscape or regional scale (known as strategic assessments)
- increased public involvement and transparency
- new offences and enforcement provisions to ensure compliance with the requirements of the new legislation
- clear timeframes for each part of the assessment process, including the Minister's decision on the environmental approval.

Some of these changes are included in the Environment Protection Bill 2019 that will be introduced into Parliament, while other changes will be in the proposed Environment Protection Regulations which will provide the detailed impact assessment processes.

What is strategic environmental assessment?

The Bill allows the NT EPA to conduct strategic environmental assessments which can be used to support strategic planning (e.g. detailed community plans), development of policy or allow for assessment of cumulative impacts within a location.

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

The approval process

What are the roles and responsibilities in the environmental impact assessment process?

The Bill sets out the following roles and responsibilities for the environmental impact assessment and approvals process:

- proponents are responsible for referring a project for consideration under the environmental impact assessment system, complying with all requirements of the assessment process and legislation and any conditions in an environmental approval
- the NT EPA is responsible for administering and conducting the environmental impact assessment process
- the Minister for Environment and Natural Resources is responsible for granting (or refusing) an environmental approval
- the Chief Executive Officer (CEO) of the Department of Environment and Natural Resources is responsible for ensuring proponents comply with the legislation and taking enforcement action where appropriate

For further information about the environmental impact assessment process, refer to the fact sheet Environmental Impact Assessment System. Refer to the fact sheet Roles and Responsibilities for further information about roles and responsibilities in environmental management and protection contained in the Bill.

What are the stages of environmental impact assessment and approval?

The NT environmental impact assessment and approval system has five stages:

1. Pre-referral – proponent makes a self-assessment on whether their project requires referral
2. Referral – the NT EPA identifies whether an environmental approval is required and, if so, determines what level of assessment is required
3. Environmental impact assessment – there are four methods or tiers of assessment dependent on the NT EPA's information requirements, level of risks and potential impacts and complexity of the project
4. Environmental approval – the Minister decides to issue or refuse an environmental approval with appropriate conditions
5. Post environmental approval – the proponent (environmental approval holder) must comply with the conditions of the environmental approval. The CEO of the Department of Environment and Natural Resources is responsible for monitoring compliance with the conditions and undertaking enforcement action where necessary.

For further information about the stages of environmental impact assessment and approval, refer to the fact sheet Environmental Impact Assessment System.

How is a project referred to the NT EPA?

Proponents must refer a project if it has the potential to have a significant impact on the environment or if it meets a referral trigger. The draft Bill provides for the development of environmental objectives to inform judgements of significant impact and establishes powers for two types of referral triggers.

Environment Protection Regulations will provide for the NT EPA to refuse to accept a referral if it contains insufficient information to enable an assessment decision, or if the NT EPA considers it does not need to be referred.

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

For further information about the referral pathways for the environmental impact assessment system, refer to the fact sheet Environmental Impact Assessment System.

What is a referral trigger?

The Bill allows the Minister for Environment and Natural Resources to establish referral triggers.

A referral trigger identifies a type of action or a location where a project is to be referred to the NT EPA for consideration under the environmental impact assessment process. These may be activity-based and location-based referral triggers.

The Minister will consult with the NT EPA and the public on proposed referral triggers, prior to their gazettal.

For further information about the referral triggers for environmental impact assessment, refer to the fact sheet Referral Pathways for Impact Assessment.

What are environmental objectives?

The Bill allows the Minister for Environment and Natural Resources to establish environmental objectives.

Environmental objectives identify those environmental matters that have value to the Territory and may need protection and establish the environmental protection requirements for those values.

The Minister will consult with the NT EPA and the public on proposed environmental objectives, prior to their gazettal.

The NT EPA has published the NT EPA Factors and Objectives. These also describe values of the environment that require protection and environmental protection objectives.

Until the Minister establishes environmental objectives in accordance with the Bill, the NT EPA will continue to apply its Factors and Objectives in the environmental impact assessment process.

For further information about the environmental objectives for environmental impact assessment, refer to the fact sheet Referral Pathways for Impact Assessment.

What are the different methods of environmental impact assessment?

Environment Protection Regulations will introduce four different methods of assessment that reflect the NT EPA's information requirements and significance of the project:

1. Assessment on referral information. This form of assessment is where the NT EPA is able to prepare an assessment report (that is, a report of its findings and advice to the Minister for Environment and Natural Resources on whether to issue an environmental approval) based on the original referral and any further information provided as part of the acceptance of the referral.

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

For further information about the different methods of environmental impact assessment, refer to the fact sheet Environmental Impact Assessment System.

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

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

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

How will significant impact be determined?

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

The NT EPA identifies where the project may have potential for significant impact on the environment applied against the Territory environmental objectives.

What is a statement of unacceptable impact?

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

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

Why is an environmental approval being introduced?

The Minister for Environment and Natural Resources is responsible for granting an environmental approval (or refusal). This decision will be based upon advice from the NT EPA at the conclusion of an environmental impact assessment process for a project. The draft environmental approval will be publicly available for review and comment.

The introduction of an environmental approval makes sure a project that has the potential for significant, irreversible impact on the Territory environment does not proceed without changes being made to the project to mitigate and reduce the impact. The environmental approval will incorporate conditions that are designed to deliver the best environmental outcomes which can include conditions to:

- manage significant potential impacts on the environment

- require environmental bonds
- require and manage offsets.

Failure to comply with an environmental approval and its conditions is an offence and subject to enforcement action.

For further information about an environmental approval, refer to the fact sheet A New Environmental Approval.

How will an environmental approval sit with other approvals required for a project?

An environmental approval will be used for regulating significant environmental matters and will replace the need for environmental conditions being placed on authorising/approval instruments (such as permits) issued under project legislation.

The environmental approval will not replace project approvals. If a project requires authorisation under the Mining Management Act 2001 (for example) in order to operate, the environmental approval will not replace this authorisation.

If a project receives an environmental approval but does not receive its project approval it cannot proceed. Similarly, if a project receives its project approval but not its environmental approval it cannot proceed.

Current projects, changes and variations

How will the changes impact current projects going through approval?

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

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

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

Special circumstances will apply to those projects that have recently completed the impact assessment process (which requires the NT EPA to have provided an assessment report prepared under the Environmental Assessment Act 1982 to the Minister for Environment and Natural Resources) but which have not started. For further information refer to the fact sheet Transitional Arrangements

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

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

Similar to the initial referral process, proponents are responsible for determining whether the changes to their project may trigger a 'notice of variation'. The NT EPA may also use its power to

'call-in' a project if it believes the project has changed to the extent that it may alter the environmental impacts or risks.

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

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

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

What happens if a proponent submits a notice of variation?

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

Timeframes and your legal rights

What are the statutory timeframes for all decisions?

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

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

For further information about the statutory timeframes that apply to the environmental impact assessment system, refer to the fact sheet A Simplified Environmental Impact Assessment Process.

What happens post environmental approval?

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

Can decisions be reviewed and appealed?

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

- judicial review: considers whether a decision was made following the correct legal procedure

- merits review: considers whether the decision was 'right' taking into account the relevant circumstances

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

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

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

Compliance and enforcement provisions

What offences relate to the environmental impact assessment process?

The NT EPA can request (or 'call-in') a proponent to refer an action if it believes a proponent is taking an action that should be referred. It is an offence if the person fails to comply with a call-in notice.

The NT EPA may issue a stop work notice if the proponent fails to comply with a call-in notice or if action has commenced prior to completion of the environmental impact assessment and approval process. It is an offence to not comply with a stop work notice.

It is also an offence under the legislation to provide false or misleading information.

What is the difference between a stop work notice and a cease work requirement?

A stop work notice is an enforcement tool that the NT EPA can use to prevent or minimise environmental impact of a project that has commenced without an environmental approval. The stop work notice serves to minimise any financial benefit to the proponent for proceeding without an environmental approval.

A cease work requirement may be incorporated into an environment protection notice issued by the CEO of the Department of Environment and Natural Resources. It is aimed at securing compliance with environmental approval conditions, regulatory requirements or the general environmental duty. The requirement to cease work may require a person to stop an activity or not commence an activity until the environment protection notice is revoked by the CEO.

What is the difference between a closure notice and closure certificate?

A closure notice may be issued by the Minister for a site which, in the Minister's opinion, will require ongoing environmental investigation, monitoring or management as a result of the activities conducted at the site. For example, the Minister may issue a closure notice requiring the approval holder to continue to monitor a site to ensure that there are no contaminants leaching from the site into groundwater or neighbouring properties.

A closure notice can specify a number of actions that a person must comply with including preparing a management plan, taking specific actions, investigations or monitoring and arranging for an environmental audit to be carried out.

It is an offence not to comply with the requirements of a closure notice. If a person does not comply with a closure notice, the CEO may carry out any specified closure notice actions and recover the costs of taking any actions required in the closure notice.

A person who holds an environmental approval may apply for a closure certificate if the person:

- has completed the rehabilitation and remediation requirements of the environmental approval
- intends to sell the land or transfer the land to another person or return it to the owner of the land or to local government or Territory government.

Before a closure certificate is issued, the Minister must be satisfied that:

- the person has met the relevant closure criteria gazetted by the Minister
- all rehabilitation and remediation requirements are completed in accordance with the Act and environment approval
- the person has complied with any requirements to provide financial assurance.

The effect of the closure certificate is to allow the person that holds the certificate to be relieved of future liability for contamination or environmental harm at or arising from the site.

What is an environment protection notice?

An environment protection notice is an enforcement tool issued by the CEO to ensure compliance with the Act and conditions of an environmental approval.

It is an offence to not comply with the requirements of an environment protection notice.

How will the Minister make sure there is compliance with an environmental approval?

The CEO of the Department of Environment and Natural Resources will be responsible for monitoring compliance with an environmental approval issued by the Minister and undertaking enforcement action if necessary.

A range of enforcement tools have been provided in the event of an offence or non-compliance with an environmental approval. Enforcement tools include:

- directions
- environment protection notices
- stop work orders
- enforceable undertakings.

For further information about compliance and enforcement provisions, refer to the fact sheet Compliance and Enforcement Tools.

Other provisions

What are protected environmental areas and prohibited actions?

The Administrator of the Northern Territory may declare an area of land with important environmental values to be a protected environmental area that should be protected from certain activities. The Minister for Environment and Natural Resources may make a temporary declaration not exceeding 12 months.

The Administrator may also declare prohibited actions that are not to be carried out in the Territory.

The Environment Protection Regulations will identify processes, including public consultation requirements that are to be followed before the Administrator makes a declaration.

A person will not be able to seek an environmental approval for an action that is prohibited in a protected environmental area or for a declared prohibited action.

Is there a duty to notify environmental incidents?

It is important that government is advised as quickly as possible about incidents that may cause environmental harm, such as through the release of pollution, to ensure appropriate action is taken to limit environmental impacts.

The Bill requires the reporting of incidents that may cause material or significant environmental harm. This is harm that is not trivial or negligible in nature.

Primary responsibility for reporting an incident is held by the approval holder. Reports can be made orally or in writing. The Environment Protection Regulations will detail the information to be given when providing notice of an environmental incident.

What are the financial provisions?

The Environment Protection Bill 2019 provides that a payment of an environmental protection bond and/or levy may be imposed as a condition of an environmental approval.

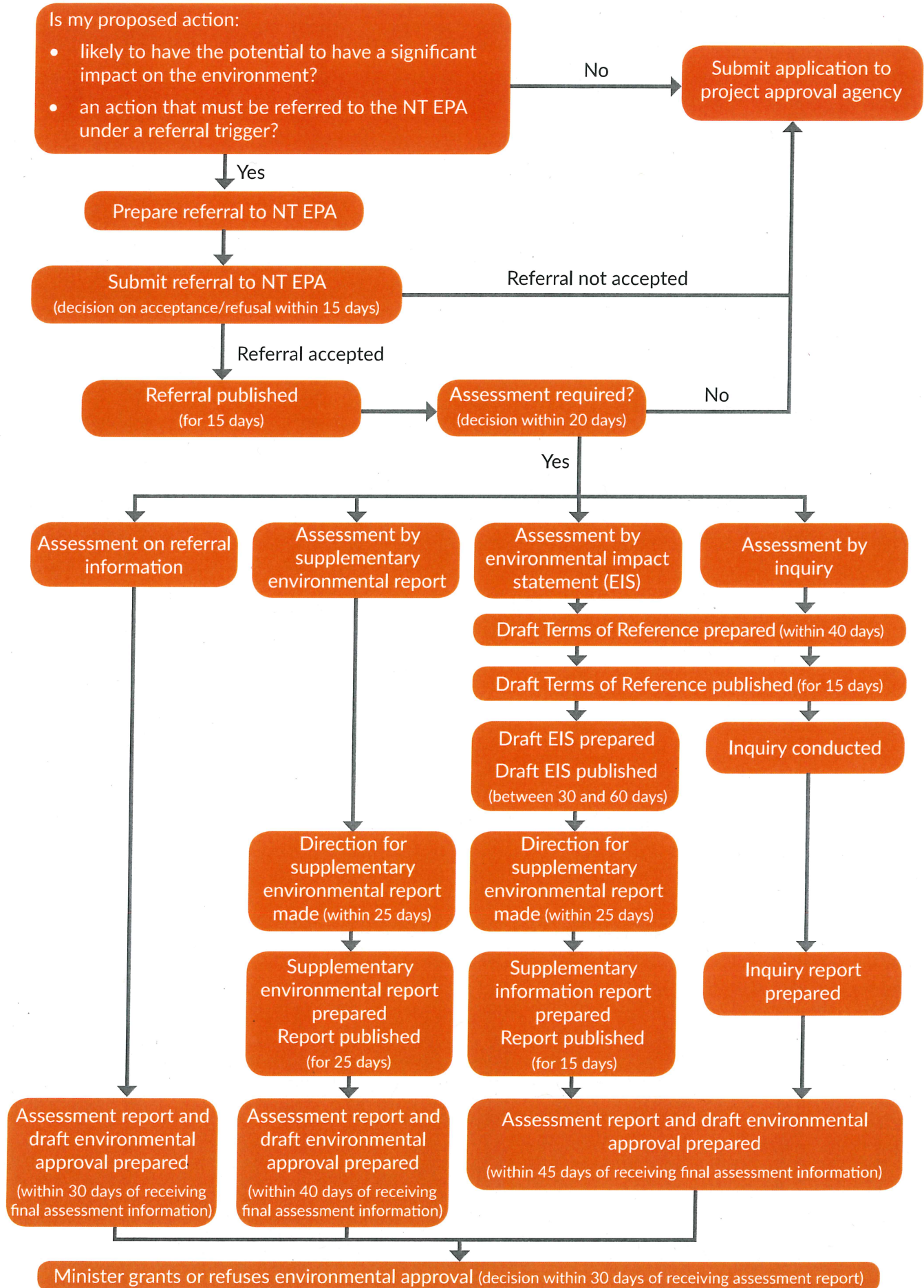
The purpose of an environmental protection bond is to ensure the approval holder meets their environmental obligations and if they do not, the bond is used to prevent, minimise or remediate environmental harm or to complete rehabilitation of the site. The amount or value of the bond considers:

- the environmental risk and project impacts
- the level of uncertainty in assessing those risks
- impacts and management measures to deal with them.

An environment protection levy is a tax paid to government by industry. The levy can be used for a number of different reasons, including to undertake research to support an industry by identifying methods to manage their environmental impacts, and to remediate and rehabilitate the environment.

The Bill also identifies that the Minister may establish environment protection funds. These are the accounts that will hold the environmental bond or levy.

Environmental Impact Assessment Process



Draft Environment Protection Bill and Regulations

PROPOSED Environmental Impact Assessment Timeframes

