

## Infrastructure and environmental impact assessment

### Summary of changes

Part 5 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) sets out environmental assessment requirements for certain 'activities' that are not otherwise assessed under other parts of the Act. These activities commonly include infrastructure works such as transport or utilities that are undertaken by public authorities and do not need development consent. Part 5 of the Act also applies to private development that requires government approvals other than development consent.

The *Environmental Planning and Assessment Regulation 2000* (2000 Regulation) contains provisions to help ensure consistent and comprehensive assessments of potential environmental impacts by specifying what factors to consider. An assessment report informs the determination of whether an activity is likely to have a significant environmental impact. This is commonly called a Review of Environmental Factors (REF).

**NOTE:** The Parliamentary Counsel's Office (PCO) has initiated a change whereby clauses within remade regulations will now be referred to as 'sections'. Therefore, this guide uses 'sections' for the 2021 EP&A Regulation and 'clauses' when referring to provisions in the 2000 Regulation.

## Changes to Infrastructure and environmental impact assessment

The *Environmental Planning and Assessment Regulation 2021* (2021 EP&A Regulation):

- retitles the relevant clause of the 2000 Regulation, clause 228 ('What factors must be taken into account concerning the impact of an activity on the environment?'), to clearly reference a 'review of environmental factors'. This distinguishes the process from the Environmental Impact Statement (EIS) process and gives statutory recognition to a widely used phrase.
- requires certain reports that determine whether an activity is likely to have a significant environmental impact (i.e. REFs) to be published on the determining authority's website or the NSW Planning Portal before the activity commences. This requirement only applies where:
  - the activity has a capital investment value greater than \$5,000,000; or
  - the activity requires another approval under:
    - the *Fisheries Management Act 1994*, sections 144, 201, 205 or 219,
    - the *Heritage Act 1977*, section 57,
    - the *National Parks and Wildlife Act 1974*, section 90,
    - the *Protection of the Environment Operations Act 1997*, sections 47–49 or 122
  - the determining authority considers that it is in the public interest to publish the report
- excludes publication of REFs for activities already subject to a Code of Practice.
- allows the Secretary of the Department of Planning, Industry and Environment (Secretary) to declare a particular class or description of activity for which a REF does not need to be published.

- allows the Secretary to prescribe guidelines for the format of a REF and the factors to be taken into account when considering the likely impact of an activity. These are published on the Planning Portal.
- clarifies that only relevant factors need to be considered, including factors that are deemed relevant but are not specifically listed.
- inserts any additional requirement for authorities to have regard to any applicable strategic planning documents made under Division 3.1 of the Act (i.e. local strategic planning statements and regional and district strategic plans).
- makes minor housekeeping changes, including removing redundant regulatory provisions relating to fishing activities and the Australian Rail Track Corporation (ARTC) that are no longer required.

## What are the benefits of these changes?

The 2021 EP&A Regulation improves transparency in the Part 5 assessment pathway. The new provision for publication of certain REFs requires authorities to demonstrate that they are considering and managing the impacts of these activities. This improves transparency around how these activities are assessed and what matters are considered when assessing an activity's environmental impact. Publication of these reports informs stakeholders that an activity has been determined, to mitigate unintended outcomes such as avoidable construction-related conflicts or community contention. Online access to these documents reflects contemporary best practice and supports a modern planning system.

By requiring consideration of strategic plans (such as regional plans), the 2021 EP&A Regulation better aligns infrastructure and land use planning. Clarifying the factors that should be considered increases procedural efficiency by providing greater flexibility in the assessment process.

Requiring publication of guidelines on the Planning Portal supports a modern planning system. The NSW government's 1996 *Is an EIS Required?* guideline is revoked on the commencement of the 2021 EP&A Regulation and removed from the Planning Portal.

Referring to REFs provides certainty on the application of the relevant provision (previously clause 228, now sections 170 and 171 of the 2021 EP&A Regulation) and allows guidance to distinguish REFs from EISs. This improves clarity and procedural efficiency for determining authorities.

The removal of redundant provisions simplifies the planning system.

## How will the updated guidance for undertaking Part 5 activities relate to the amendments of the 2021 EP&A Regulation?

The 2021 EP&A Regulation allows the Secretary to prescribe guidelines for the format of an REF and the factors to be taken into account when considering the likely impact of an activity (see section 171(3) of the 2021 EP&A Regulation).

Once the guidance for undertaking Part 5 activities has been reviewed and updated, it will be prescribed by the Secretary and published on the Planning Portal for the purpose of this section.

Prescribing these guidelines and requiring determining authorities to prepare REFs in accordance with these guidelines helps to ensure REFs are documented in a standard format. This enables authorities to demonstrate the matters considered when assessing an activity's environmental impact in a regular and consistent manner. Together, these initiatives help to improve assessment quality, transparency, and readability.

## Commencement

The 2021 EP&A Regulation commences on 1 March 2022. Section 171 does not apply in relation to an activity if the determining authority had, immediately before 1 March 2022, considered the likely impact of the activity under the Act, section 5.9 and the 2000 Regulation, clause 228.

The requirement to publish a REF is delayed until 1 July 2022 to give determining authorities time to update their systems and internal processes. See Section 5 of Schedule 6 Savings, transitional and other provisions for further detail.

The new guidance for undertaking Part 5 activities is expected to be finalised in 2022.

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