

## 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).

### What changes are proposed?

The proposed *Environmental Planning and Assessment Regulation 2021* (proposed 2021 Regulation) proposes to:

- Retitle the relevant clause (currently 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 will distinguish the process from the Environmental Impact Statement (EIS) process and give statutory recognition to a widely used phrase.
- Require 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 will only apply where:
  - the activity has a capital investment value greater than \$5,000,000; or
  - the activity requires another statutory approval; or
  - the determining authority considers that it is in the public interest to publish the report.
- Allow the Secretary of the Department of Planning, Industry and Environment 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 will be published on the Planning Portal.
- Clarify that only relevant factors need to be considered, including factors that are deemed relevant but are not specifically listed.
- Insert 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).
- Make 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 proposed 2021 Regulation will improve transparency in the Part 5 assessment pathway. The new provision for publication of certain REFs will require authorities to demonstrate that they are considering and managing the impacts of these activities. This will improve transparency around how these activities are assessed and what matters are considered when assessing an activity's environmental impact. Publication of these reports will inform 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.

Requiring consideration of strategic plans (such as regional plans) will better align infrastructure and land use planning. Clarifying the factors that should be considered will increase 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 will be revoked on the commencement of the 2021 Regulation and removed from the planning portal. The department is currently reviewing and updating its guidelines for activities undertaken as development without consent under Part 5, Division 5.1 of the Act – see 'Related initiative' below.

Referring to REFs will provide certainty on the application of the relevant clause (previously clause 228, now clause 151 under the proposed 2021 Regulation) and will allow guidance to distinguish REFs from EISs. This will improve clarity and procedural efficiency for determining authorities.

Other changes will simplify the planning system by updating or removing redundant provisions.

### Related initiative - Update to guidance for undertaking Part 5 activities

The department is currently reviewing and updating its guidelines for activities undertaken as development without consent under Part 5, Division 5.1 of the Act ('Part 5 activities') in consultation with stakeholders.

The purpose of this review is to help facilitate improved assessment processes that are transparent, consistent and proportionate to the infrastructure being proposed. The new guidelines will assist public authorities in meeting the requirements of the Act and Regulation.

A new planning portal web tool is also being developed to assist public authorities and determining authorities. This tool will enhance community access to activities that have been determined under Part 5.

Public authorities will be invited to attend a series of workshops for more information on the tools once they are ready to be developed and implemented.

### How will the updated guidance for undertaking Part 5 activities relate to the amendments proposed in the 2021 Regulation?

The proposed 2021 Regulation will allow the Secretary of the Department of Planning, Industry and Environment 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 clause 155 under the proposed 2021 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 clause.

Prescribing these guidelines and requiring determining authorities to prepare REFs in accordance with these guidelines (see clause 156(3) under the proposed 2021 Regulation), will help ensure REFs are documented in a standard format. This will enable authorities to demonstrate the matters considered when assessing an activity's environmental impact in a regular and consistent manner. Together, these initiatives will improve assessment quality, transparency and readability.

## When will these changes commence?

The proposed 2021 Regulation is expected to commence on 1 March 2022. Transitional arrangements may apply.

The new guidance for undertaking Part 5 activities is expected to be finalised in 2022, after the new 2021 Regulation has commenced.

## How can I have my say?

We invite you to make a submission on the proposed 2021 Regulation via our website during the exhibition period: [www.planningportal.nsw.gov.au/EPA-regulation-review](http://www.planningportal.nsw.gov.au/EPA-regulation-review)

If you would like to speak with us in a language other than English, call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.

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