

Environmental Planning and Assessment Regulation 2000

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Schedule 2

Schedule 2 Environmental impact statements

Part 1 Definitions

1 Definitions

In this Schedule:

environmental assessment requirements means the requirements of the Secretary under Part 2.

infrastructure means State significant infrastructure.

responsible authority means the relevant consent authority or determining authority or, in the case of State significant infrastructure, the Minister.

responsible person means the applicant or proponent responsible for preparing an environmental impact statement.

Part 2 Requirements of Secretary and approval bodies

2 Application of Part

This Part applies to an environmental impact statement prepared under section 4.12 (8) or 5.7 of the Act.

3 Environmental assessment requirements

- (1) Before preparing an environmental impact statement, the responsible person must make a written application to the Secretary for the environmental assessment requirements with respect to the proposed statement.
- (2) The application is to be in a form approved by the Secretary and must include particulars of the location, nature and scale of the development or activity.
- (3) The Secretary may require the responsible person to provide further particulars.
- (4) In preparing the environmental assessment requirements with respect to an application for State significant development, the Secretary must consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.
 - (4A) Without limiting subclause (4):
 - (a) if a gateway certificate has been issued in relation to State significant development to which an application for environmental assessment requirements relates, the Secretary, in preparing the requirements, must address any recommendations of the Gateway Panel set out in the certificate, and
 - (b) if a gateway certificate has been issued by operation of clause 17I (3) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* in relation to the State significant development to which an application for environmental assessment requirements relates, the Secretary, in preparing the requirements, must consult with the Gateway Panel and have regard to the need for the requirements to assess any key issues raised by that Panel.

- (4B) If a gateway certificate in respect of proposed State significant development is issued after environmental assessment requirements for that proposed development have been notified under this clause, the Secretary:
- (a) must have regard to any recommendations of the Gateway Panel set out in the gateway certificate, and
 - (b) may modify the requirements in accordance with subclause (5).
- (5) The Secretary is to notify the responsible person and (where relevant) the responsible authority in writing within the required time of the environmental assessment requirements. The Secretary may modify those requirements by further notice in writing.
- (6) The Secretary may impose environmental assessment requirements by reference to specified publications.
- (7) If the development application or application for approval to which the environmental impact statement relates is not made within 2 years after notice is last given under subclause (5), the responsible person must consult further with the Secretary in relation to the preparation of the statement.
- (8) The responsible person must ensure that an environmental impact statement complies with any environmental assessment requirements that have been provided in writing to the person in accordance with this clause.
- (9) The Secretary may at any time waive (unconditionally or subject to conditions) the requirement for an application under this clause in relation to any particular development or activity or any particular class or description of development or activity other than the following:
- (a) integrated development,
 - (b) State significant development that, but for section 4.41 of the Act, would require an authorisation specified in that section,
 - (c) State significant development in respect of which an authorisation (other than a consent under section 138 of the *Roads Act 1993*) must be given under section 4.42 of the Act.
 - (d) (Repealed)
- (10) In this clause, *required time* means:
- (a) within 28 days after the application is made under subclause (1), or
 - (b) if the Secretary has requested further particulars, within 28 days after those particulars have been provided to the Secretary, or
 - (c) within such further time as is agreed between the Secretary and the applicant.

4 Integrated development—requirements of approval bodies

- (1) An application for environmental assessment requirements must, in the case of a development application for integrated development, also include particulars of the approvals that are required.
- (2) Following any such application, the Secretary must request, in writing, each relevant approval body to provide the Secretary with that approval body's requirements in relation to the environmental impact statement.
- (3) The Secretary is to notify an approval body of the environmental assessment requirements and of any modification to those requirements but only if the approval body has provided the Secretary with written notice of its requirements within 14 days after receipt of the Secretary's request under subclause (2).

- (4) If the approval body's requirements have not been provided within that time, the Secretary must inform the responsible person in writing and the responsible person:
- (a) must apply to the approval body for its requirements in relation to the environmental impact statement, and
 - (b) in completing the environmental impact statement must have regard to those requirements if they are provided to the responsible person.
- (5) In this clause:

approval body's requirements means the approval body's requirements in relation to an environmental impact statement for the purpose of its decision concerning the general terms of the approval in relation to the development (including whether or not it will grant an approval).

Part 3 General provisions

5 Application of Part

This Part applies to an environmental impact statement prepared under section 4.12 (8), 5.7 or 5.16 (2) of the Act.

6 Form of environmental impact statement

An environmental impact statement must contain the following information:

- (a) the name, address and professional qualifications of the person by whom the statement is prepared,
- (b) the name and address of the responsible person,
- (c) the address of the land:
 - (i) in respect of which the development application is to be made, or
 - (ii) on which the activity or infrastructure to which the statement relates is to be carried out,
- (d) a description of the development, activity or infrastructure to which the statement relates,
- (e) an assessment by the person by whom the statement is prepared of the environmental impact of the development, activity or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule,
- (f) a declaration by the person by whom the statement is prepared to the effect that:
 - (i) the statement has been prepared in accordance with this Schedule, and
 - (ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and
 - (iii) that the information contained in the statement is neither false nor misleading.

7 Content of environmental impact statement

- (1) An environmental impact statement must also include each of the following:
- (a) a summary of the environmental impact statement,
 - (b) a statement of the objectives of the development, activity or infrastructure,
 - (c) an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,

- (d) an analysis of the development, activity or infrastructure, including:
 - (i) a full description of the development, activity or infrastructure, and
 - (ii) a general description of the environment likely to be affected by the development, activity or infrastructure, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
 - (iii) the likely impact on the environment of the development, activity or infrastructure, and
 - (iv) a full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment, and
 - (v) a list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out,
- (e) a compilation (in a single section of the environmental impact statement) of the measures referred to in item (d) (iv),
- (f) the reasons justifying the carrying out of the development, activity or infrastructure in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).

Note. A cost benefit analysis may be submitted or referred to in the reasons justifying the carrying out of the development, activity or infrastructure.

- (2) Subclause (1) is subject to the environmental assessment requirements that relate to the environmental impact statement.
- (3) Subclause (1) does not apply if:
 - (a) the Secretary has waived (under clause 3 (9)) the need for an application for environmental assessment requirements in relation to an environmental impact statement in respect of State significant development, and
 - (b) the conditions of that waiver specify that the environmental impact statement must instead comply with requirements set out or referred to in those conditions.
- (4) The principles of ecologically sustainable development are as follows:
 - (a) the *precautionary principle*, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
 - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - (ii) an assessment of the risk-weighted consequences of various options,
 - (b) *inter-generational equity*, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
 - (c) *conservation of biological diversity and ecological integrity*, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
 - (d) *improved valuation, pricing and incentive mechanisms*, namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

8 Sale of copies of environmental impact statement

A responsible authority:

- (a) may sell copies of an environmental impact statement to any member of the public for not more than \$25 per copy, and
- (b) must pay the proceeds of any sale to the responsible person, and
- (c) must return to the responsible person any unsold copies of the environmental impact statement.

9 Documents forming part of environmental impact statement

- (1) Any document adopted or referred to by an environmental impact statement is taken to form part of the statement.
- (2) Nothing in this Schedule requires the responsible person to supply any person with a document that is publicly available.

10 Responsible authority may require additional copies

The responsible authority may require a responsible person to give it as many additional copies of an environmental impact statement as are reasonably required for the purposes of the Act.

Part 4 Special provisions for State significant infrastructure

11 Application of Part

This Part applies to environmental assessment requirements and environmental impact statements under Division 5.2 of the Act.

12 Environmental assessment requirements for State significant infrastructure

In preparing the environmental assessment requirements with respect to an application for State significant infrastructure, the Secretary:

- (a) may require the responsible person to provide further particulars, and
- (b) may impose environmental assessment requirements by reference to specified publications.

13 Environmental assessment requirements of Secretary

The responsible person must ensure that an environmental impact statement complies with the environmental assessment requirements that have been notified to the proponent by the Secretary under section 5.16 of the Act.

14 Environmental impact statement submitted 2 years after requirements notified

If an environmental impact statement is not submitted to the Secretary under section 5.17 of the Act within 2 years after notice is last given under section 5.16 (4) of the Act, the responsible person must consult further with the Secretary in relation to the preparation of the statement.

