

# FACT SHEET: Referrals and application of the Assessment Bilateral Agreement under the *Environment Protection and Biodiversity Conservation Act 1999*

## EPBC Referrals and the Assessment Bilateral Agreement

Proposals still need to be referred to the Commonwealth, under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), if they are likely to have a significant impact on a matter of national environmental significance. Following the EPBC referral, the Commonwealth still determines whether or not the proposal is a 'controlled action' requiring assessment and approval under the EPBC Act.

Referral of the same proposals may also be necessary to the State under Victorian legislation (e.g. *Environment Effects Act 1978*), based on the relevant Victorian requirements. The new Assessment Bilateral Agreement does not remove the need to comply with relevant Victorian and Commonwealth law.

The opportunity for a proposal to be assessed via an accredited process under the Assessment Bilateral Agreement will be influenced by the alignment of referrals of the proposal to both the Commonwealth and Victoria. If a proposal is referred under Victoria legislation well ahead of the referral to the Commonwealth, the Victorian assessment process may be too far progressed to accredit, so duplication of environmental assessment requirements could be difficult to avoid. This would be the same if the EPBC referral occurs well in advance of a referral under Victorian legislation, although the Commonwealth will seek advice from the State on the potential for an accredited Victorian process occurring.

## Aligning engagement and referrals with the Commonwealth and Victoria

In preparation for referring a proposal under both the EPBC Act and possibly Victorian legislation, proponents are strongly encouraged to engage with both parties, to help ensure best possible alignment of referrals (State and Commonwealth), and to assist the State in its identification of the appropriate accredited assessment pathway under the Bilateral Agreement.

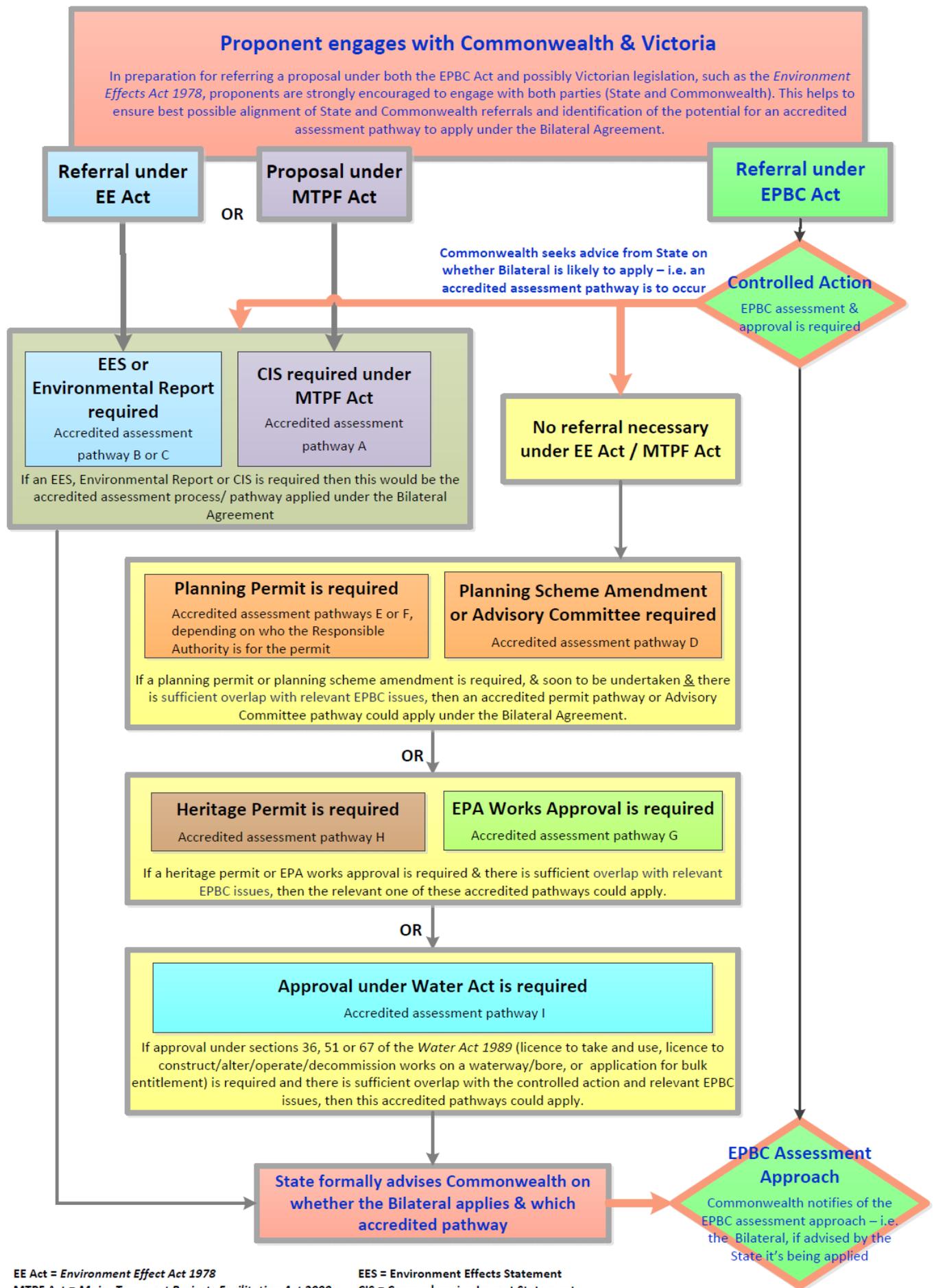
Under the Bilateral Agreement, procedures for referral require the State and Commonwealth to align referral processes wherever possible to: help streamline overlapping requirements, enable timely advice to proponents, and support sound decision-making on the required assessment processes.

## How is the applicable accredited assessment pathway determined?

Under the Bilateral Agreement, the Minister for Planning, as the lead Victorian Minister or delegate, determines whether the Bilateral Agreement will apply for a 'controlled action' and advises the Commonwealth on the accredited pathway being used. This occurs informally and then in writing 10 business days after the Commonwealth Minister provides written notice that a proposal is a 'controlled action' under the EPBC Act.

Determining the potential for a relevant accredited assessment pathway largely relates to the assessment or approval process(es) required for the proposal under Victorian legislation – refer to the outline of this in the diagram below.

# Referrals and application of the Bilateral Agreement



EE Act = *Environment Effect Act 1978*

MTPF Act = *Major Transport Projects Facilitation Act 2009*

EES = Environment Effects Statement

CIS = Comprehensive Impact Statement

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## Will the new Bilateral Agreement apply to proposals currently being assessed through a Victorian statutory process?

Existing proposals can be assessed under the new Bilateral Agreement, subject to the Commonwealth's 'controlled action' decision being made on or after 1 January 2015, and provided the current Victorian assessment process is not too far progressed. For example, if the scoping stage of an EES for a given project has been completed, it is very unlikely that this EES process can be used as an accredited assessment under the Bilateral Agreement.

Any proposals already being assessed under the previous (2009) Bilateral Agreement between Victoria and the Commonwealth will continue to be assessed via their current accredited assessment (e.g. Environment Effects Statement).

## What matters of national environmental significance can be assessed under the Bilateral Agreement?

Impacts on all matters of national environmental significance, excluding the Great Barrier Reef, are able to be covered by appropriate accredited assessments under the Bilateral. However, the Agreement does not cover proposals located within the Commonwealth marine area or on Commonwealth land, either wholly or in part. Projects located outside those areas that may have a significant indirect impact on the environment of those areas are covered.

Matters of national environmental significance (MNES) are:

- world heritage properties
- national heritage places
- wetlands of international importance (listed under the Ramsar Convention)
- listed threatened species and ecological communities
- migratory species protected under international agreements
- Commonwealth marine areas
- nuclear actions (including uranium mines)
- a water resource, in relation to coal seam gas development and large coal mining development.

## Further information

For further information on the Bilateral Agreement or referral requirements under Victorian Law, contact the department's Impact Assessment Unit:

- Email: [environment.assessment@delwp.vic.gov.au](mailto:environment.assessment@delwp.vic.gov.au)
- Phone (03) 8508 2276.

For further information on the Commonwealth EPBC Act and its requirements, as well as pre-referral engagement guidance, please refer to the Department of Agriculture, Water and the Environment website (<http://www.environment.gov.au/epbc/what-is-protected>) or call 1800 803 772.

