

## Having your say on mining and quarries: Fact sheet 1

# An overview of environmental impact assessment under the *Environment Effects Act 1978*

## Introduction

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Environmental impact assessment is a process for assessing the impacts on the environment likely to result from development proposals. A key aspect of the Victorian process is preparation of an environment effects statement (EES) by the **proponent** (the project proposer). The EES process aims to identify and mitigate the impacts of proposals that could have a 'significant effect' on the environment. Such proposals might include projects like mines, quarries, roads, boat ramps, prisons, hazardous waste storage facilities, pipelines or power stations.

The various stages of the EES process are regulated by the *Environment Effects Act 1978* (the EE Act). The legal framework is administered by the Minister for Planning and the Department of Environment, Land, Water and Planning (DELWP). Most of the details about the EES process are set out in the ***Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978*** (the Ministerial Guidelines). The Act and the Ministerial Guidelines can be found at [www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria](http://www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria).

This fact sheet provides an overview of the EES process. It is part of a set of fact sheets developed to help communities who may be affected by major new mining and quarrying proposals in Victoria, to participate effectively in the EES process.

# Environmental approvals and environmental impact assessment

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Mining, extractive industries and other development in Victoria are regulated under a range of different laws. These laws set standards that must be met, and in many cases require approvals to be obtained before a proposal can proceed. Common examples of legislation where approvals or licenses might be required include the *Mineral Resources (Sustainable Development) Act 2004*, and the *Planning and Environment Act 1987*, but the applicable legislation will vary depending on the nature and location of the proposal.

Environmental impact assessment is the process of identifying the environmental, social and economic impacts of a proposed project. Environmental impact assessment occurs to some degree under most environmental approval processes such as the issue of a planning permit or approval of a mine, however in some cases the Planning Minister can decide that a statutory and more comprehensive process is required under the EE Act. In effect, the process of preparing an Environment Effects Statement replaces and brings together the assessment processes under other legislation, integrating the consideration of these impacts in order to inform the final approvals decision by decision-makers under applicable laws.

## When is an Environment Effects Statement required?

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Whether an EES is required is up to the Minister for Planning, subject to the provisions of the EE Act and guided by criteria in the Guidelines.

The EE Act aims to identify and mitigate adverse environmental impacts of proposals that could have a 'significant effect' on the environment. Proposed projects are not automatically subject to an EES. Proposals may be referred to the Minister by their proponents, or by a decision-maker who needs to assess the proposal for other legal reasons (see 'Other relevant legislation' below). Criteria to help proponents and decision-makers decide whether a proposal might have a potential significant effect on the environment and therefore should be referred, are set out in the Ministerial Guidelines (pp 7–8). The Planning Minister may also decide to examine a proposal without such a referral.

The Minister then decides whether a particular referred proposal requires an EES. About two-thirds of referrals do not result in an EES.<sup>1</sup> The Minister for Planning provides a public notice on the reason for decision for each proposal referred under the EE Act, which is published on the DELWP website. The criteria for whether a referral should be made (Ministerial Guidelines, p7) are different from the criteria which the Minister must consider in deciding whether an EES is required (Ministerial Guidelines, p10).

A decision by the Planning Minister not to require an EES may be subject to conditions. About a third of proposals where it is decided that an EES is not required are subject to these conditions, such as the form, scale or location of the proposed development, and required investigations or consultations.<sup>2</sup>

If an EES is not required, consideration of the impacts of the proposal may still be required as part of approvals processes under other legislation. These approvals might include a planning scheme amendment or planning permit under the *Planning and Environment Act 1987* or a works approval process under the *Environment Protection Act 1970*.

For examples of proposals that have been referred to the Minister for Planning, see [www.planning.vic.gov.au/environmental-assessment/decisions-on-ees-referrals](http://www.planning.vic.gov.au/environmental-assessment/decisions-on-ees-referrals).

This fact sheet assumes that the EES process has been engaged. If the Minister decides that an EES is required, customarily, she or he also then decides that an inquiry will be appointed.

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<sup>1</sup> <https://envirojustice.org.au/major-reports/rigour-or-rubber-stamp-implementation-and-enforcement-of-the-environment-effects-act>, pp910; <https://www.planning.vic.gov.au/environmental-assessment/ees-referrals-from-2013>.

<sup>2</sup> See note 1.

# Scoping

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Once the decision is made to require an EES, the Minister sets the scope for it – what matters should be investigated and documented. The Ministerial Guidelines require scoping of an EES to be guided by a proportionate approach to the level and likelihood of risk of adverse environmental effects. Scoping also takes a view of the environment as an integrated and interdependent system that therefore needs ‘an interdisciplinary approach’ (Ministerial Guidelines, p14) in order to effectively assess the impacts.

**Draft scoping requirements** are generally prepared by the Department of Environment, Land, Water and Planning (DELWP), with input from the proponent and appropriate agencies, within 20 business days of receiving the required information from the proponent. They are then released for public comment for **at least 15 business days**.

**Scoping requirements** should be finalised within 15 business days after the close of public comments. The Scoping Requirements are then published on the DELWP website. These set the parameters for the preparation of the EES by the proponent.

## Relevant approvals legislation

During the scoping stage, legislation under which statutory approvals for the proposal may be required is identified. Similarly relevant strategies, plans and statutory standards should be identified at this stage.

Under the provisions of the *Aboriginal Heritage Act 2006* (Vic), irrespective of other triggers, if the proposal requires an EES, a Cultural Heritage Management Plan (CHMP) must be prepared. The CHMP is a written document that assesses the potential impact of the proposed activity on Aboriginal cultural heritage, and outlines the measures that should be taken before, during and after the activity in order to manage and protect Aboriginal cultural heritage in the area.

A CHMP must be prepared by a Heritage Adviser, and may then be evaluated by the relevant Registered Aboriginal Party (RAP), or if there is no RAP in place, any other appropriate Aboriginal individuals or groups that the proponent consults. The RAP or the Secretary of Department of Premier and Cabinet, or in certain circumstances the Aboriginal Heritage Council, then decides whether the CHMP should be approved. For more detail, see [www.vic.gov.au/aboriginalvictoria/heritage](http://www.vic.gov.au/aboriginalvictoria/heritage).

Other legislation may be relevant depending on the nature of the proposal. For example, proposals may be subject to Commonwealth law if they involve a proposed ‘controlled action’ as defined by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). For detail on how this relates to the EES process, see **Fact Sheet 3 The EPBC Act and the EES process**.

As outlined above, there might also be decision-making processes that are already in progress, such as a works approval under the *Environment Protection Act 1970*. It may be that relevant decision-maker – in the works approval example, the Environment Protection Authority – who has referred the proposal for EES assessment. These types of decisions are put on hold until after the Minister’s EES Assessment (see below), and the relevant applications may be advertised in tandem with the EES process (see ‘Public review’ below). Note however that mine/quarry proposals are largely exempt from needing separate works approvals and planning permits if they are subject to an EES (see **Fact Sheet 2 Mine/quarry proposals and the EES process**).

Other potentially relevant Victorian laws include: *Planning and Environment Act 1987*, *Flora and Fauna Guarantee Act 1988*, *Wildlife Act 1975*, *Water Act 1989*, *Environment Protection Act 1970*, *Dangerous Goods Act 1985*, *Radiation Act 2005*, *Occupational Health and Safety Act 2004*, *Coastal Management Act 1995*, *Road Management Act 2004*, *Heritage Act 1995*, *Heritage Rivers Act 1992*, *Land Act 1958*, *Forests Act 1958*, *Crown Land (Reserves) Act 1978*, and various State Environment Protection Policies (air, land and groundwater, noise, water).

For examples of the multiple forms of legal decision-making required for some proposals, see [www.planning.vic.gov.au/environmental-assessment/completed-projects](http://www.planning.vic.gov.au/environmental-assessment/completed-projects).

For examples of scoping requirements, see [www.planning.vic.gov.au/environmental-assessment/projects](http://www.planning.vic.gov.au/environmental-assessment/projects).

During the scoping phase, the Planning Minister also may make decisions about the form that the public inquiry will take, although she or he can make this decision at any point after deciding to appoint an inquiry (see ‘Public Review’ below).

## Preparing the EES

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The proponent is responsible for preparing the EES and consulting with the general public and stakeholders in order to inform individuals and groups who may be affected and provide opportunities for input on issues of concern and possible options. Proponents must devise a consultation plan and a study program concerning the various issues, and agree to a time schedule with DELWP.

DELWP appoints a Technical Reference Group (TRG) to provide technical advice to both the proponent and the Department. Members of the TRG include representatives from government agencies, local government and regional authorities.

Note that although community consultation and possibly social impact assessment is required as part of the development of the Environment Effects Statement, it is unlikely that there will be an opportunity for community involvement in or scrutiny of other material to be included in the Environment Effects Statement until the Statement is finalised by the proponent and exhibited (see **Fact Sheet 4 *Getting your voice heard in the EES process***).

Subject to the requirements set out in the scoping document, an EES usually contains:

- a description of the proposed development;
- a description of the existing environment that may be affected;
- an outline of public and stakeholder consultation undertaken during investigations and the issues raised;
- assessment of the potential environmental effects of the proposal;
- proposed measures to avoid, minimise or manage adverse environmental effects, including assessment of relevant alternatives for the proposed project and a proposed monitoring and management program during project implementation;
- an outline of relevant legislation and policy and how these will be addressed as part of the management framework; and
- technical reports commissioned by the proponent in response to the scoping requirements for the EES.

For more detail, see the Ministerial Guidelines, especially pp14–22 [www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria](http://www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria).

## Exhibition and public comment on the EES

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When the EES has been completed, the Minister releases it for public comment (written submissions). The Ministerial Guidelines provide for a submission deadline of **20–30 business days, but in practice, all recent EESs** have been exhibited for at least 30 business days. If statutory approval (other legal decisions such as a mining work plan approval or planning permission) is also required for the proposal, these applications will typically also be exhibited together with the EES (see **Fact Sheet 4 *Getting your voice heard in the EES process***).

The EES is usually a very lengthy and complex document, and it is difficult for members of the community to analyse and respond to it within 30 business days. For practical suggestions on preparation and submission writing, see **Fact Sheet 4 *Getting your voice heard in the EES process***.

A public inquiry to consider the EES and submissions raised typically follows exhibition of the EES (see 'The inquiry stage' below). Prior to this inquiry, issues raised in submissions on the EES, or through the consultation process, should be responded to by the proponent in writing and distributed as part of the documentation for any inquiry. The proponent's response may include trying to negotiate a resolution of particular issues before the inquiry takes place.

## The inquiry stage

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The inquiry considers the effects of the proposed project, having regard to the EES studies and public submissions. While the inquiry may be a desktop review of written submissions or a roundtable conference with submitters, for all recent EESs (since 2006) the inquiry has taken the form of a public hearing, with presentations from the proponent and submitters, and expert evidence. For more detail, see **Fact Sheet 4 *Getting your voice heard in the EES process***.

## Minister's assessment

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The Planning Minister prepares an assessment based on the EES documents, public submissions, the proponent's responses and the report of the inquiry. The Minister may also have requested that the proponent provide a supplementary statement, and the public may have been invited to comment on this, in which case the supplementary statement also forms part of the context for assessment. The Minister's assessment is normally provided to decision-makers and the proponent within 25 business days of receiving the inquiry report. It is also published on the DELWP website along with the inquiry report.

The assessment may conclude that the proposed project:

- will have an acceptable level of environmental effects; or
- will not have an acceptable level of environmental effects; or
- would need major modifications and/or further investigations to establish that acceptable outcomes would be achieved.

For examples of Ministerial assessments and inquiry reports, see [www.planning.vic.gov.au/environmental-assessment/completed-projects](http://www.planning.vic.gov.au/environmental-assessment/completed-projects).

## Approval decisions

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The Planning Minister's assessment is intended to inform the approval decisions required under other legislation and does not of itself constitute an approval. The proposed project is ultimately approved or refused by the relevant Government or statutory decision-makers (the relevant Minister, local government or statutory authority) that administer the appropriate approvals legislation. They must consider the Minister's assessment, and generally follow the Planning Minister's recommendations although the assessment is not binding.

## Fact sheets in this series

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Download all fact sheets from our website: [www.cels.org.au/kits-and-fact-sheets/#having-your-say](http://www.cels.org.au/kits-and-fact-sheets/#having-your-say).

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## About the Community Environmental Legal Service (CELS)

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Providing legal help to Victorians as part of the Community Environmental Legal Service (CELS) program is one of the many ways Environmental Justice Australia pursues access to justice.

The CELS program provides legal help for Victorians through the publication of kits, fact sheets and videos which provide accessible and practical environmental law information to the Victorian community. Through the CELS program we also conduct legal workshops in Victoria, run by one of our expert environmental lawyers to suit the needs of community groups or groups of individuals concerned about or impacted by environmental issues.

Environmental Justice Australia believes that all Australians have a right to clean air, clean water, and intact ecosystems. It's also crucial that our communities have a real say over what happens to our environment, and that means participating in decision-making processes. We're working to pursue environmental justice for communities affected by environmental harm by supporting their right to information, their right to participate in the legal and legislative process, and their right to participate in decision-making about their communities and the places where they live.

If you have a query about anything in this Fact Sheet, or would like the Community Environmental Legal Service to assist you to protect the environment, please call us: **8341 3100 (metropolitan)** or **1300 336 842 (regional)**

Donate at: [www.envirojustice.org.au/donate](http://www.envirojustice.org.au/donate)

## Acknowledgment

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The education program will better equip local community members to participate in public consultation processes and engage with project proponents and other stakeholders.

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### DISCLAIMER

**This fact sheet is intended to provide information only and is not a substitute for legal advice specific to your circumstances.**

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