



Australia - EIA in the Legal and Regulatory Framework

For Nuclear Energy Related Activities

20th FNCA Coordinators Meeting

Tokyo, Japan

7th March 2019

Science. Ingenuity. Sustainability.

What is the EPBC Act

- The Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) is the Australian Government's central piece of environmental legislation.
- The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places—defined in the EPBC Act as matters of national environmental significance.

What is the EPBC Act

- confers jurisdiction over actions that have a significant impact on the environment where the actions affect, or are taken on, Commonwealth land, or are carried out by a Commonwealth agency (even if that significant impact is not on one of the nine matters of 'national environmental significance')

Aims of the EPBC Act

- **protection of the environment, especially matters of national environmental significance**
- conserve Australia's biodiversity
- protect biodiversity internationally by controlling the international movement of wildlife
- provide a streamlined environmental assessment and approvals process where matters of national environmental significance are involved
- protect our world and national heritage
- promote ecologically sustainable development.

Matters of National Environmental Significance

- Nine matters of National Environmental Significance
 - world heritage listed areas
 - national heritage places
 - Internationally protected wetlands (' Ramsar' wetlands)
 - nationally threatened species and ecological communities
 - migratory species
 - Commonwealth marine areas
 - the Great Barrier Reef Marine Park
 - **nuclear actions (including uranium mining)**
 - a water resource, in relation to coal seam gas development and large coal mining development.

Nuclear Actions

- establishing or significantly modifying a **nuclear installation**
- transporting **spent nuclear fuel** or **radioactive waste products** arising from reprocessing
- establishing or significantly modifying a **facility for storing radioactive waste** products arising from reprocessing
- **mining or milling uranium ores**, excluding operations for recovering mineral sands or rare earths
- establishing or significantly modifying a **large-scale disposal facility for radioactive waste**. A decision about whether a disposal facility is large scale will depend on factors including:
 - the activity of the radioisotopes to be disposed of
 - the half-life of the material
 - the form of the radioisotopes
 - the quantity of isotopes handled
- **decommissioning or rehabilitating any facility or area** in which an activity described above has been undertaken
- any other type of action set out in the EPBC Regulations.

Who does the EPBC Act affect

- landowners
- developers
- industry
- farmers
- councils
- state and territory agencies
- Commonwealth agencies

Role of the Federal Environment Minister

- The minister's key decision-making role with federal environmental assessments is to ensure that matters covered by national environment law are protected. When making a decision, the minister cannot consider matters that fall outside this federal legislation.
- State and local government approvals might cover different matters from those protected by national environment law under their relevant legislation, so an activity may need approval from all three levels of government.
- The federal environment minister cannot intervene in matters that fall outside national environment law.
- The department works with its state and territory counterparts to ensure information is shared and to align assessment processes where possible.

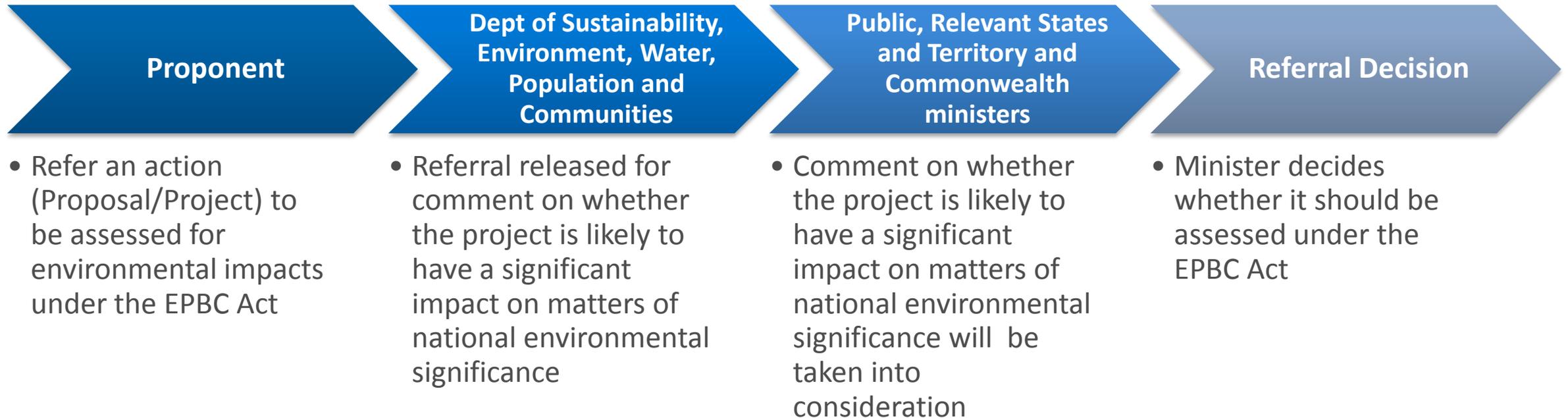
International Treaties

- Australia is party to **170 treaties** related to **Environment and Resources**
- Complete list
[https:// info.dfat.gov.au/info/treaties/treaties.nsf/WebView?OpenForm&Seq=2](https://info.dfat.gov.au/info/treaties/treaties.nsf/WebView?OpenForm&Seq=2)

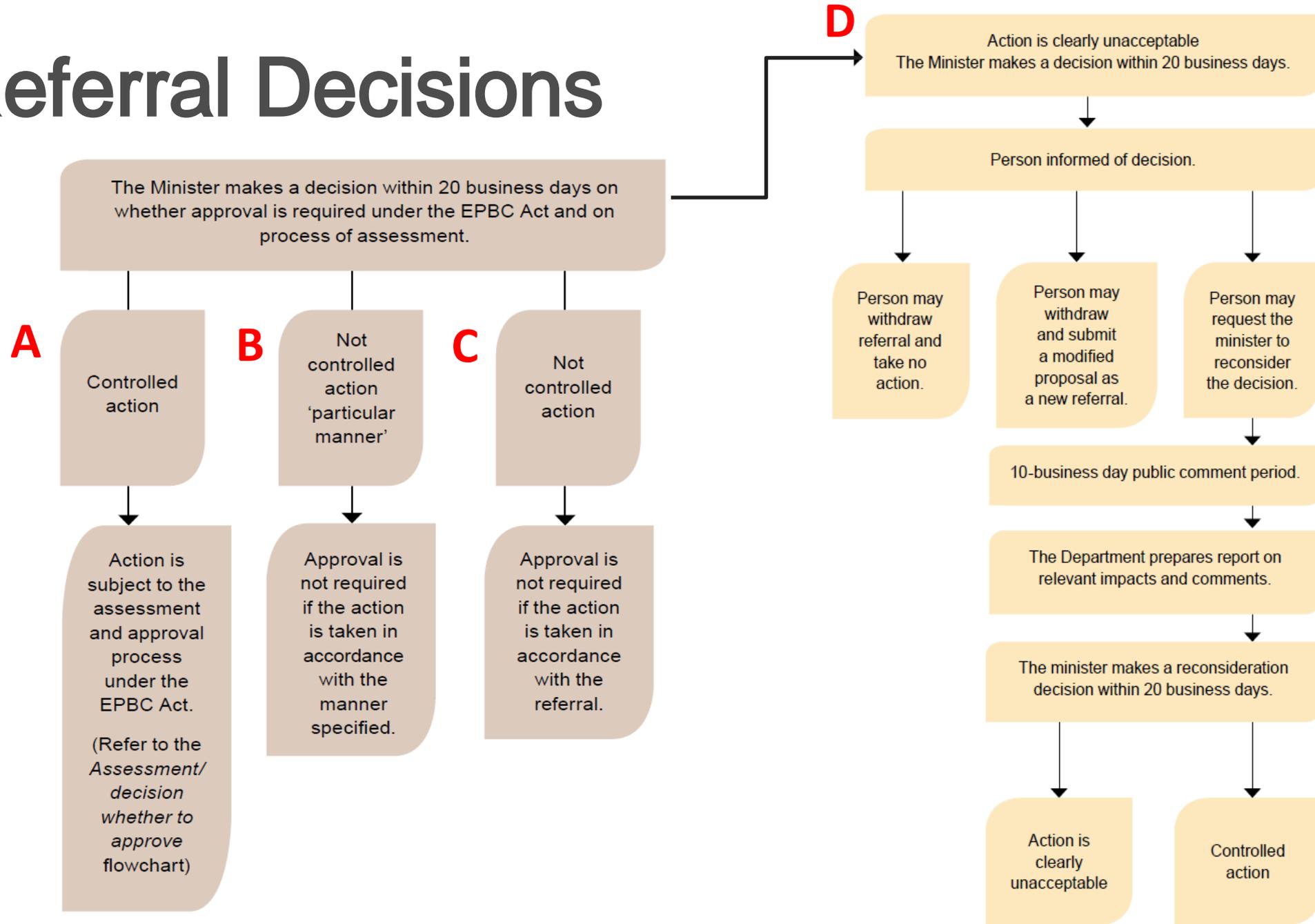
Does a Proposed Action needs to be Referred?

- Is the proposed action likely to have a significant impact on
 - a **matter of national environmental significance**?
 - the **environment in general** (for actions by Commonwealth agencies or actions on Commonwealth land) or
 - the **environment on Commonwealth land** (for actions outside Commonwealth land)?
- If not certain about whether proposed action requires approval under the EPBC Act, refer the proposal for a decision by the Minister.

Referral Process



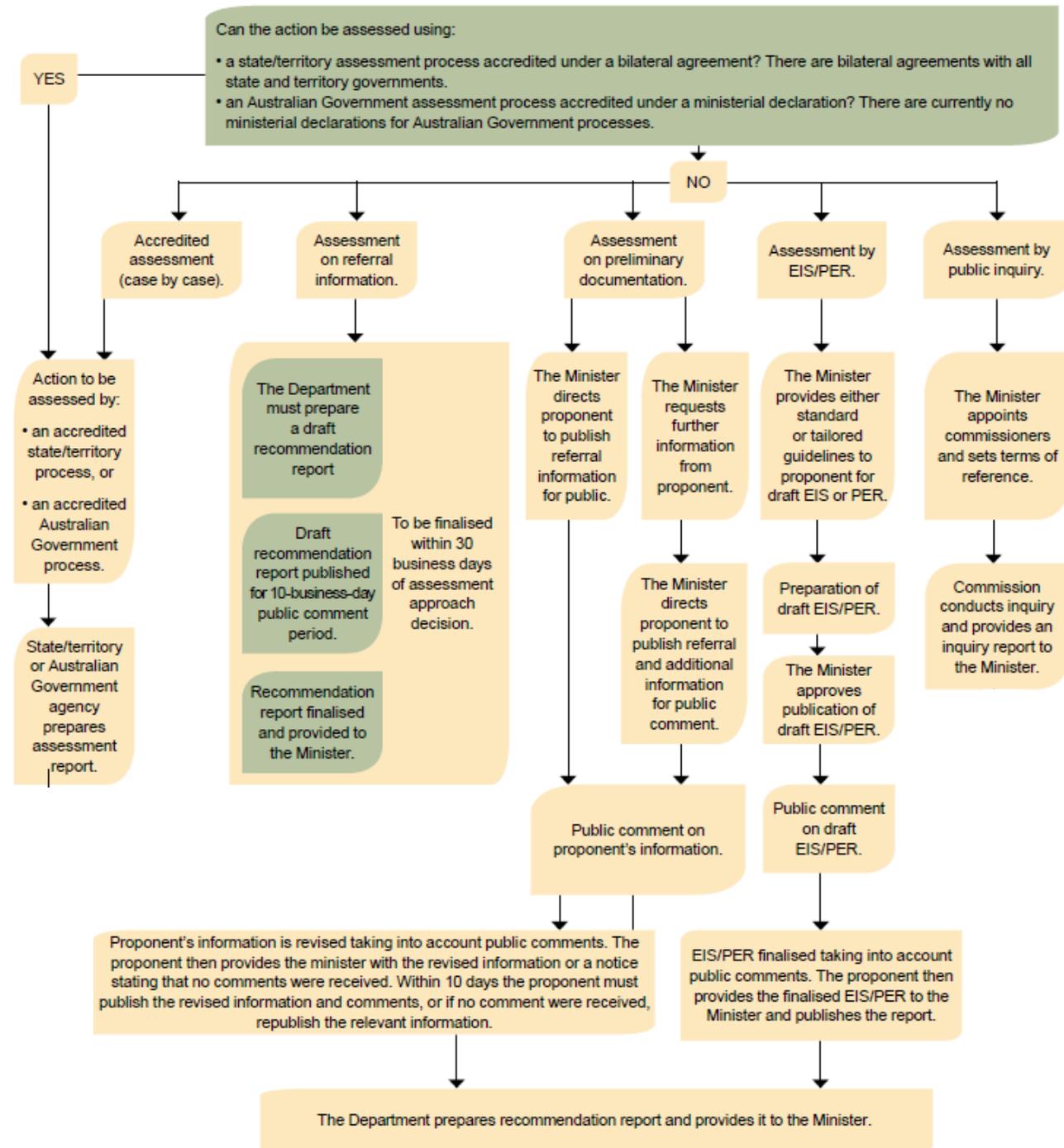
Referral Decisions



Referral Decisions

- **Action clearly unacceptable:** this means the activity cannot proceed because it is clear it will have an unacceptable impact on nationally protected matters. This is essentially a decision to refuse approval for the project.
- **Not controlled action :** this means the activity does not need further assessment because it is not likely to have a significant impact on nationally protected matters.
- **Not controlled action, particular manner :** this means the activity does not need to be further assessed but must be carried out in the manner described in the decision.
- **Controlled action:** this means that a significant impact on a nationally protected matter is likely, and the activity needs to undergo federal assessment. → *A method of assessment will then be chosen, which will vary depending on the scale and complexity of the activity.*

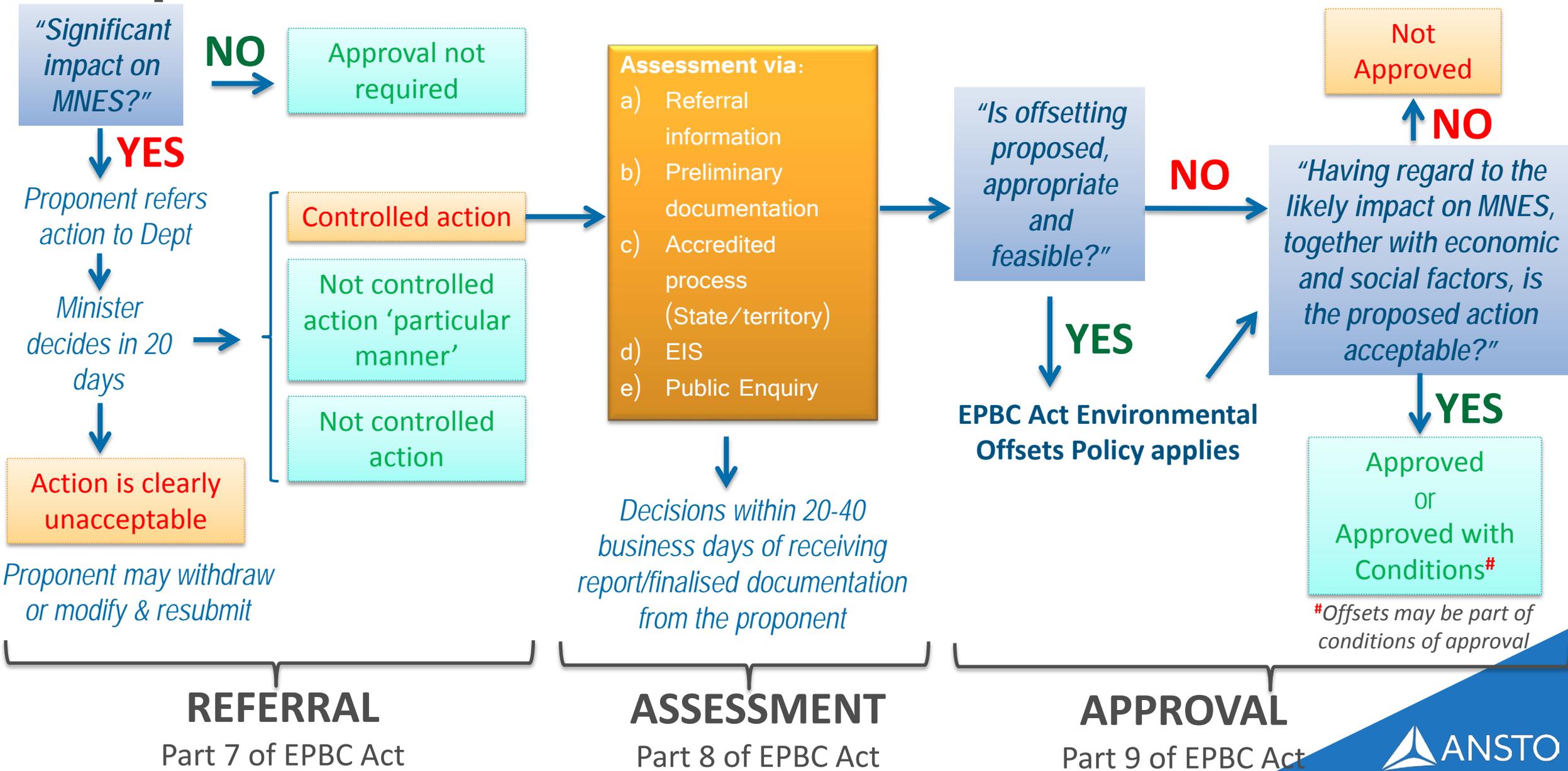
Assessment Process



Assessment Decisions

<u>Type of Assessment</u>	<u>Timeline</u>	<u>Decision</u>
State/Territory process	<ul style="list-style-type: none">• 30 business days of receiving an assessment report	Approved Approved with Conditions Not Approved
Referral Information	<ul style="list-style-type: none">• 20 business days of receiving a finalised recommendation report	
Preliminary Documentation	<ul style="list-style-type: none">• 40 business days of receiving finalised documentation from the proponent	
EIS/PER	<ul style="list-style-type: none">• 40 business days of receiving finalised documentation from the proponent	
Public Inquiry	<ul style="list-style-type: none">• 40 business days of receiving an inquiry report	

Simplified EPBC Act Decision Process



Exemptions

Environmental impact assessments

- Under s158
- Any or all steps in the assessment and approvals process
- Minister satisfied that it is in the national interest to do

Listed species and ecological communities permits

- Under s303A
- Seek permits for any or all prohibitions in Part 13 to not apply
- Minister satisfied that it is in the national interest to do

National emergencies

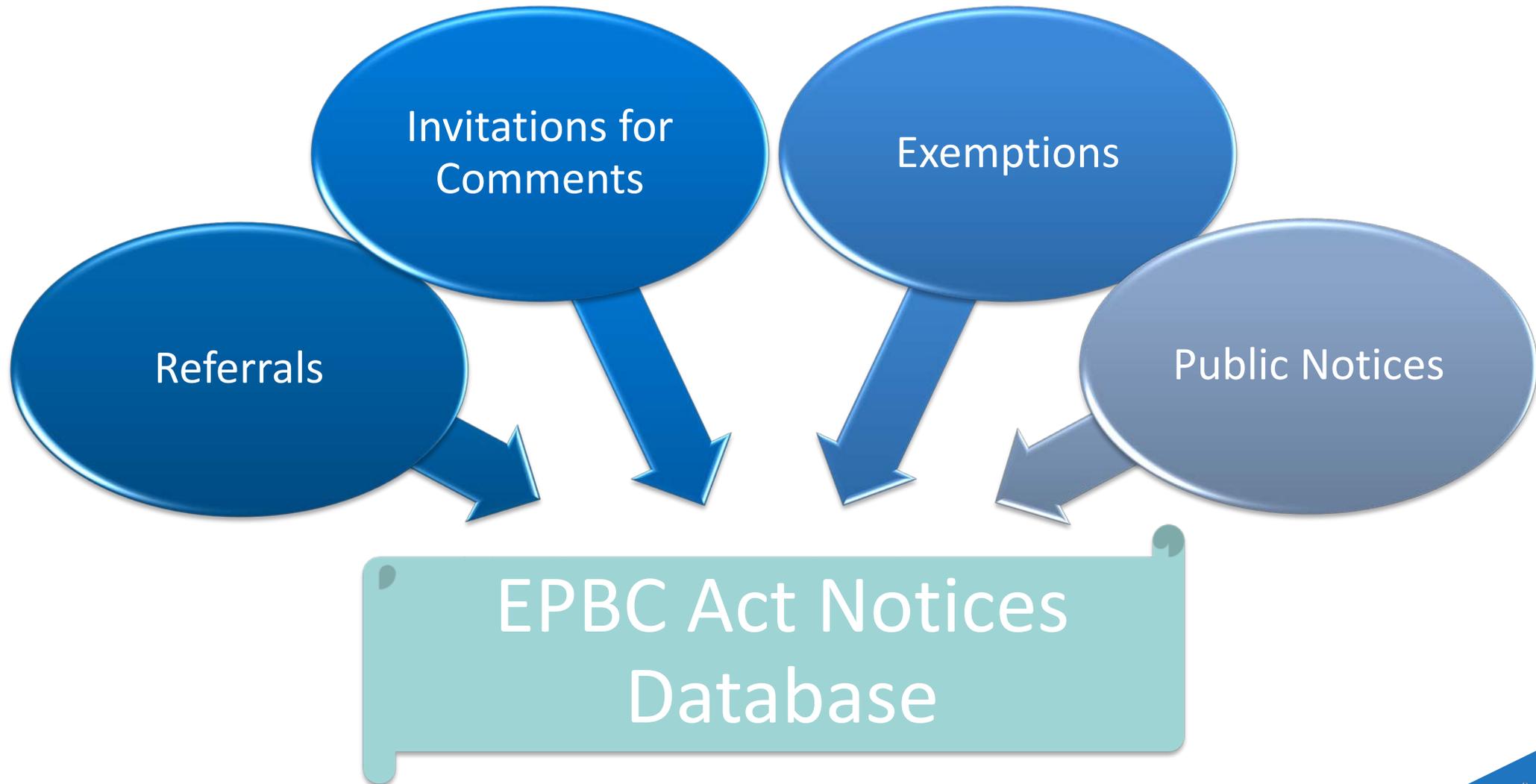
- Under ss28(3)
- Necessary for Australia's defence or security or in relation to preventing, mitigating or dealing with a national emergency.

Commonwealth agencies

- Under ss28(4) and ss28(5)
- Declare actions or a class of actions to be undertaken by a Commonwealth agency are exempt from assessment and approval processes
- Minister satisfied that the Commonwealth agency will comply with state/territory environment protection laws

All notices of exemption and the reasons for granting the exemptions must be published.

Public Access



Compliance and Enforcement

- [EPBC Act Compliance and Enforcement Policy](#)
- Proactive compliance measures
- Mechanisms to enforce non-compliance
 - *Civil or criminal penalties*
 - *Remediation orders and determinations—repair/mitigate environmental damage*
 - *Enforceable undertakings—negotiate civil penalties and provide for future compliance*
- Public can report breaches to Department

Nuclear Actions Referred by ANSTO

Nuclear Actions	Proposed Activity	Referral decision
Transporting SF or Radwaste products arising from Reprocessing	2016/7841 OPAL SF to France 2015/7437 ILW from France 2007/3672 HIFAR SF to USA	Not a controlled action – pm Not a controlled action – pm Not a controlled action
Establishing or significantly modifying a nuclear installation	2012/6598 ANSTO Nuclear Medicine Mo99 Facility 2003/1114 Construct and Operate Extension of B23 for production of Radioisotopes and related activities 2006/2740 Upgrade of B54 hot cells for Mo99 production	Not a controlled action – pm Not a controlled action Not a controlled action
Establishing or significantly modifying a facility for radwaste storage	2016/7733 Extension & Upgrade Waste Management Facilities 2012/6564 Interim Waste Storage Facility 2012/6697 SYNROC Waste Treatment Facility 2008/4459 Construction of Nuclear Materials Store 2001/342 Waste Treatment and Packaging Building	Not a controlled action – pm Not a controlled action – pm Not a controlled action Not a controlled action Not a controlled action
Decommissioning or rehabilitating a (nuclear) facility or area	2010/5645 Decommissioning of NMC & Camperdown Facility 2008/4615 Decommissioning of MOATA Reactor	Not a controlled action Not a controlled action

Other Referred Nuclear Actions – U mines

Controlled Actions	Not a controlled action
2014/7138 Extension of Wiluna U Mine, WA	2017/7857 Processing of bulk sample high grade ore, Ranger U Mine, NT
2013/7083 Develop Mulga Rock U Mine Project, WA	2010/5751 Establish small scale U mine In-situ Recovery Field Trial, SA <i>(particular manner)</i>
2013/6722 Develop and operate underground mine at Ranger U Mine, NT	2009/4860 Construction of exploration decline, NT
2010/5637 Develop Kintyre U mine and assoc plant, WA	2009/4828 Rehabilitation of Abandoned U Mines and Assoc infrastructure, NT
2009/5174 Open pits U mine - Wiluna U Project, WA	2007/3331 Oban U Deposit Field Leach Trial, SA
2009/5138 Beverley North Extension to Beverley U Mine, SA	2007/3300 Rehabilitation of Abandoned U Mines in Gunlom Aboriginal Land Trust Area, NT
2008/4252 Four Mile Extension to the Beverly U Mine, SA	2000/51 Gunlom U Mill Residues Interim Works, NT
2006/3167 Beverley U Mines Extension, SA	
2005/2270 Expansion of Olympic Dam processing plant an assoc infrastructure, SA	

National Radioactive Waste Management Facility

- Nuclear actions (sections s21 & 22A of the EPBC Act)
- Commonwealth actions (section 28)
- Actions on Commonwealth land (sections s26 & s27A)
- Action on the 'protected environment' is (section 22A)
 - (a) ecosystems and their constituent parts, including people and communities
 - (b) natural and physical resources
 - (c) the qualities and characteristics of locations, places and areas
 - (d) heritage values of places
 - (e) the social, economic and cultural aspects of a thing mentioned in (a) to (d).

Thank you.